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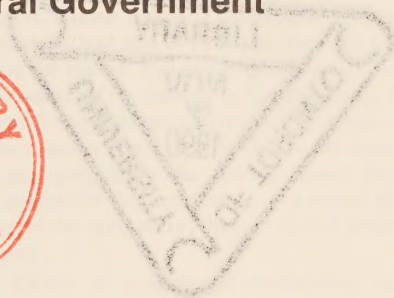


Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government
Organization



Second Session, 34th Parliament
Thursday 19 October 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 19 October 1989

The committee met at 1609 in room 228.

ORGANIZATION

Clerk of the Committee: If I might have your attention, ladies and gentlemen, it is my duty to call upon you to elect a chairman. I shall open the floor to nominations.

Mr J. B. Nixon: I nominate Mr Pelissero as chairman.

Clerk of the Committee: Are there any other nominations? As there are no other nominations, Mr Pelissero, please take the chair. You are elected chair.

The Chair: I accept. Thank you.

The next item of business is the election of the vice-chairman. I open the floor for nominations of a vice-chairman.

Mr J. B. Nixon: I move that Mr Furlong be nominated as the vice-chair.

The Chair: Any further nominations? Mr Furlong, will we let your name stand?

Mr Furlong: I accept.

The Chair: Thank you. Well done.

Next is establishing a subcommittee on committee business, and there is a motion attached.

Mr Furlong moves that a subcommittee on committee business be appointed to meet from time to time at the call of the chair or at the request of any member thereof to consider and report to the committee on the business of the committee; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting, and that the subcommittee be composed of the following members: Mr Pelissero, chair, Mr J. B. Nixon, Mr Charlton from the New Democratic Party and Mr McLean for the Conservatives.

Motion agreed to.

The Chair: Ms Bryden, did you want to speak to item 4?

Ms Bryden: Yes, I do. First of all, as far as precedent goes in a situation like this, the standing committee on the Ombudsman decided not to deal with a substantive item, a report that had been referred to it and that was on the agenda for this particular organizing meeting, because there were no Conservative representatives avail-

able. Whether we should follow that or not is up to us.

Mr Charlton did point out to me before he left that since the committee had its hearings on Countdown Acid Rain and it has done a report, subsequent information came out in the hearings of Ontario Hydro before the Ontario Energy Board which would be worth considering before we finalize that report. For that reason in particular, he thought we should not do any work in this field, as well as for the other reason that we do not have all-party representation. I think it probably would be a good idea.

The Chair: Ms Bryden moves that the committee postpone the in camera hearing on Countdown Acid Rain until such time as it finds out what was said on this subject in the Ontario Hydro submission to the Ontario Energy Board and any other information that has come in subsequently on this subject.

Mr Nixon, do you wish to speak to that motion?

Mr J. B. Nixon: Briefly, I can understand one of the reasons that Mrs Bryden puts forward for deferring the matter, and that is that there are no representatives of the third party. Quite frankly, I cannot understand the second reason, but there is no point in going into it. Just let the record show that I am questioning the second reason but totally concur for the first reason, as a matter of courtesy to the third party, that we should defer this matter.

The Chair: As a matter of clarification, in your motion, when you say "until such time," is that until such time next Thursday morning? Is that what you are proposing, that we deal with finalizing the committee's report on Countdown Acid Rain next Thursday morning at 10 o'clock, starting at 10 o'clock?

Ms Bryden: I do not think so, because I think we may not have the information that came out in that Ontario Energy Board hearing as it affects acid rain by that date. We can certainly ask for it and hope we will get it, but it may not be that readily available.

Mr J. B. Nixon: I do not want to get into substantive debate, but it is clear to me there is going to be a fundamental disagreement between ourselves. The intention of this committee was to

review information that was put before it at its request. That having been done, I will be arguing at some point that it is time to issue the report and table it in the Legislature.

If we are going to sit and wait until another committee of the Legislature reviews matters which it believes to be its mandate and then have that evidence referred to us when that committee has dealt with it, I cannot accept that. If we are going to set it over one week, let's do that out of courtesy to the third party. But this is not a continuous reporting loop or job that we are engaged in. I would either amend or urge Ms Bryden to amend her motion and have this matter set over to next Thursday, the next meeting of the committee.

Ms Bryden: First of all, I would like to ask whether we have other items on our plate that could also be scheduled tentatively for next Thursday. It is possible that, say, we could put this item on the agenda for next Thursday and Mr Charlton or anybody else will come and make a case for deferring it further because the information is not available, and therefore we will simply debate that point only. I think we should have something else lined up for next Thursday in case the committee decides to accept the position that we are not ready for finalizing this particular report.

The Chair: It is my understanding from the clerk that that is the only outstanding item of business that this committee has to deal with that has been referred to us. According, I believe, to the new rules, we have not received anything from a subcommittee because there has not been a subcommittee meeting yet called. So the only item of business that we have to deal with is finalizing the report on Countdown Acid Rain.

Ms Bryden: Do you not expect that we will have received the report from the subcommittee by next Thursday? I think all of the four standing committees are having meetings of the people involved and are putting forth bids for the time of the committee under that new procedure where the committee can examine specific problems in the whole area of our entire constituency that reports to general government.

The Chair: That may be the case but I am informed by the clerk that to date he has not had anything—I am assuming either verbally or in writing—from any of the three members who were named to that subcommittee. They are the only individuals, in my understanding of the rules, who can write to the clerk requesting that the subcommittee deal with four items, wanting to designate up to 12 hours. To date, as of this

afternoon, he does not have anything, so I come back to my original statement that the only item of business that we currently have before this committee is to finalize the committee's report on Countdown Acid Rain.

Mr Nixon was asking if you would be willing to amend your resolution to state that we would deal with finalizing the report next Thursday morning at 10 o'clock in a room to be assigned to us. Is that something that you can be comfortable with or live with?

Ms Bryden: Does that mean you have to call witnesses or anything else?

The Chair: No. It can be discussed at that time, but on the agenda it talks about an in camera meeting to finalize the committee's report on Countdown Acid Rain. My understanding of Mr Nixon is that he would like that to be dealt with next Thursday morning at 10 o'clock. I guess there are two options: If you are not prepared to amend your motion, Mr Nixon can move an amendment and we can vote on that, or we can vote on your motion and then if Mr Nixon wants to bring forward another motion we can do that as well.

Ms Bryden: I would amend my motion that we put it on the agenda for next Thursday then. At that time we will discuss whether we are going to do the whole report or postpone it further. But I would hope that you would bring to the meeting next Thursday where we are at on the other issue of choosing subjects for that special 12 hours of study. I understand from Mr Charlton that he is getting his subcommittee together on Monday if possible, if the people are available. He tried this week, and nobody was available.

The Chair: In terms of trying to get together individuals from a subcommittee, I can understand why he would have some difficulty because, as of Monday, they were not yet named. There was no subcommittee to name.

Ms Bryden: No, no. The assignment of each ministry to one of the four standing committees was the original assignment from which the co-ordinators were chosen, and they were supposed to meet.

The Chair: For clarification, Mr Carrozza.

Clerk of the Committee: Ms Bryden, that process was conducted by the Legislative Assembly and was completed. The lists were given to all the chairmen, stating which ministry will be assigned to the four standing committees. That has been completed, but Mr Pelissero is suggesting that before that could happen, each member of our subcommittee must call upon the chairman

to set up the subcommittee so they can discuss whether they wish to proceed with that matter. That has not happened yet because, as Mr Nixon has pointed out, we only set up the committee today, so some time next week perhaps we will be at a different stage.

The Chair: I guess I am at the beck and call of those individuals who were named to the

subcommittee and there is, I believe, a process outlined by the standing orders by which that can happen. So let's deal with your motion to deal with finalizing the committee's report on Countdown Acid Rain next Thursday morning at 10 o'clock in room 228.

Motion agreed to.

The committee adjourned at 1621.

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Bryden, Marion (Beaches-Woodbine NDP)
Charlton, Brian A. (Hamilton Mountain NDP)
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Staff:
Yeager, Lewis, Research Officer, Legislative Research Service





No. G-2

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government
Public Service Pension Act, 1989

Second Session, 34th Parliament
Thursday 16 November 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

Published by the Legislative Assembly of Ontario
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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 16 November 1989

The committee met at 1013 in room 228.

PUBLIC SERVICE PENSION ACT, 1989 (continued)

Consideration of Bill 36, An Act to revise the Public Service Superannuation Act.

The Vice-Chair: I would like to welcome you to the standing committee on general government. This morning we are going to continue our review of Bill 36, An Act to revise the Public Service Superannuation Act.

For the purpose of letting everyone know where we are, at the last meeting we had decided that we would have a ministry presentation this morning. There are various representatives from the ministry here and we will get into that in a moment.

Also at this time, so that members will be here when this is discussed, the clerk was to contact certain presenters. He has done that and perhaps he can give us a report as to where he is at.

Clerk of the Committee: I contacted all of the unions requested by the committee and I was informed by them that the Ontario Public Service Employees Union would be making a presentation on their behalf, with the exception of the Ontario Provincial Police Association. I contacted the police association directly and I spoke to Mr Kingston who informed me that he was satisfied with the proposed amendments and that he would not be making a presentation on this bill.

The OPSEU people with whom I spoke will be meeting with the committee next week and they have requested three hours for their presentation on behalf of all the members.

The Vice-Chair: Does anybody wish to discuss the report from the clerk? Are there any comments on the timing? Fine.

Then we will proceed with the review. I do not know how you propose to do this. First, I would introduce Ms Hošek, the parliamentary assistant to the Chairman of Management Board of Cabinet. Do you want to introduce the presenters?

Ms Hošek: Sure. We are going to be doing this presentation in two parts. One part of the presentation is from people in the Ministry of Treasury and Economics, and that is what we

will begin with. I presume we will leave that also to Kathy Bouey, whom I would like to introduce to you, and she can introduce the rest of the members of her team.

MINISTRY OF TREASURY AND ECONOMICS

Ms Bouey: To my right is John Brophy, who is a partner with Peat Marwick Stevenson Kellogg. He is an actuary who has been providing us with outside advice on this matter. Next to him is Bruce Macnaughton, who is assistant director of the intergovernmental finance branch in Treasury and Economics, which I am also with. Sandra Tychsen, next to him, is the director of the finance policy branch in Treasury and Economics.

The purpose of our presentation is to provide you with some background information as to how the proposals in this bill came about and to give you an explanation of the financial reforms in the bill. If I could call your attention to the black book that is in front of you, the slides that I will be using are under tab A of that book.

If I could ask you to begin by turning to page 3 of that, you will find on that page a chronology. The purpose of this is just to explain that the measures contained in this bill came about after quite an extensive series of events and consultations.

The project was initiated as part of the 1986 budget when the Treasurer (Mr R. F. Nixon) announced that there would be a review of the financing of indexation benefits. Two independent reports were commissioned at that time. One was the Coward report, which related specifically to the funding of the indexation benefits for the teachers and the public service pension plans. There was also the Rowan report. Rowan was asked to look at the investment policy of all of the major public service pension plans.

Those reports were released in February 1988. Because there had been no opportunity for input to the Coward report from the interested parties, and because the measures contained in both reports were quite far-reaching in terms of the proposed reforms, the Treasurer, the Chairman of the Management Board of Cabinet (Mr Elston) and the then Minister of Education, who is the

member for Wentworth North (Mr Ward), asked David Slater, a former chairman of the Economic Council of Canada, to engage in a consultation process with the interested parties. That included the unions involved, the Ontario Provincial Police Association and many outside groups as well.

In August 1988, the Slater report was released, and as part of his recommendations he proposed some discussions with representatives of the plan members. We will be coming back to the details of all this, but the discussions with the plan members commenced in September 1988 and continued in the fall.

In January 1989, the Treasurer announced the intended reform measures and the 1989 budget provided the financial resources necessary to begin the reforms in January 1990. Finally, the bill that you are now dealing with was introduced in June of 1989. So it has been a long process to date.

Before we start, turning to the next page, perhaps it might be useful just to touch on some background concepts. The first thing I would like to just go back to is something very basic; that is, what a pension plan is.

It is a plan organized and administered to provide a retirement income for the remainder of the lifetime of members and their spouses. It is usually related to their employment because these things are usually provided in relation to their employer, and the degree of replacement of income depends on the length of work experience with the employer.

There are two major types of pension plans; one is a defined contribution plan and the other is a defined benefit plan. Under a defined contribution plan, when people retire they get whatever benefit can be purchased by the total amount of the contributions which are made, whatever that money is, plus the money it has earned.

In a defined benefit plan, by contrast, what is being committed to is the stream of benefit payments, which are provided by some type of formula. In other words, no matter what the contributions have been, people are promised a particular type of benefit based on the formula.

The members' pension benefit in the case of the public service relates to the best consecutive five years of earnings plus their number of years of service. Generally, the pension legislation in Ontario, the regulatory legislation, the Pension Benefits Act, requires defined benefit plans to be fully funded; that is, contributions plus interest earned in the working years. That is, contributions on behalf of both the employer and the

employee are intended to pay for the benefit stream of the employee. If the accumulated funds are insufficient, the plan sponsor must make payments to the pension fund to make up the shortfall.

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The way that public service pensions are now financed, turning to page 5, is done in two parts. First of all, there is the basic benefit, which is the amount that is provided through this formula. That is financed through a six per cent matching contribution rate; that is, the employer plus the employee each pay that amount. It is fully funded. The benefits are paid for essentially as they are earned, and the government has paid deficits in the basic fund in the past and is required to do so under the existing legislation.

The other component is the indexation benefit, the part that changes the benefit in line with changes in the consumer price index. It is paid for through a one per cent matching contribution rate. We say it is partially funded, in that benefits of retirees are paid for with the contributions of the current contributors and a small amount of interest that is earned on what is essentially quite a small fund. But it is not fully funded. The idea when this piece of legislation was introduced, the Superannuation Adjustment Benefits Act, was that contributions were to be raised as required.

On page 6 we come to the problem, which is that if nothing is done the indexation fund will run out of money by the end of this century. The reason this occurs is basically due to two decisions that were made when the indexation benefit was established back in 1975. First of all, because the decision was made just to pay for retirees' benefits on the basis of current contributions, the current contribution rate was not set high enough to pay for benefits as they were earned.

Second, the benefit was provided retroactively to those who were then working. To give you an illustration of what this means, if someone had been working 20 years by 1976 he would get the benefit when he retired, say, in 1988 as if he had been contributing the whole time and had been earning this benefit the whole time. But in fact, they would only be paying the one per cent for the 12 years since 1976 and they would have paid zero per cent in respect of the 20 previous years. Similarly, the government would not have made those contributions on their behalf. I would also note that people who retired prior to 1976 receive the same inflation protection, but it is paid from the consolidated revenue fund without any

funding. So it is just paid as it is needed each year.

Perhaps if we can turn to the next page, you will see that in 1999, our latest projections tell us, the funding status will become negative. As you can also see, it is not something that is just a temporary blip; it continues for some time.

Turning to page 8, you can see why the pay-as-you-go becomes a problem and is not sustainable. When the indexation fund was established there were approximately five people working for every retiree. However, we are now in a situation where the ratio is closer to two to one and that will continue to drop.

To come now to the reports that came out, this background information was the reason the Treasurer asked for the review of the status of this fund. To start with the Rowan report, which dealt more broadly with all public sector pension funds, he made a number of recommendations concerning investment.

First, he suggested that plan members should participate in pension fund decisions with governance based on what he called the pension "deal." In other words, if the government remained plan sponsor, continuing to be responsible for plan deficits, the plan members should have minority representation. If there was some sort of shared responsibility, then it should be joint representation.

He recommended clarification of the risk-reward sharing. He said that if the government was responsible for plan deficits essentially, for the taxpayer it was also important that the government have access to the surpluses. For the public service fund specifically, he recommended that the basic and indexation funds be combined and the funding be placed on a more sound basis. He indicated a preference for full funding, but noted it was beyond his mandate.

He suggested that the funds could do better through using market investments and proposed that the funds have a phased move to market investments. I should note that right now both funds are invested in government deposits in the consolidated revenue fund.

He also suggested that the funds should be administered through a board established at arm's length from the government and that the government should not direct the board to make specific investments. His concern was the problem of conflict, that under the Pension Benefits Act the board is required to behave as a prudent person in that it has to get the best rate of return on the money for a specified level of risk. His concern was that if the board was directed to

make investments, that it might be put in a situation of making concessionary investments and therefore be in a conflict situation.

Turning now to the Coward report, he dealt with specifically the question of these indexation funds. He found that the public service indexation benefits fund had an unfunded liability of \$3.1 billion; that is, that if nothing was done on behalf of the people in the plan and the benefits they have earned and would earn, then \$3.1 billion would be needed to finance the benefits that would not be covered by the contributions. He proposed combining the indexation fund with the basic fund and fully funding the combined fund. He noted that such a proposal would have more stability in terms of fluctuations and inflation. He also recommended that the current indexation be continued if members were willing to pay their share of it.

The current situation is that the plan is indexed so that people's benefits are increased to 100 per cent of the consumer price index, up to a ceiling of eight per cent. If inflation exceeds eight per cent in a particular year, then the excess is carried forward and applied in a subsequent year when it is under eight per cent. He also suggested that the government fund the past deficit over 15 or 25 years and that market investments be permitted in the future.

As I mentioned earlier, after the Coward and Rowan report came out, David Slater was asked to consult with the interested parties. While he did not come out with clear conclusions—he basically suggested there were a range of options to choose from—his findings were essentially consistent with Rowan and Coward, although he did provide more options. In particular, he noted that there was no way that the current contributions would be sufficient to pay for the current benefit level.

The significant differences on the financial aspects were that he felt that the assumption used by Coward in his calculations, in terms of what the fund could be expected to earn, was too low, that one could reasonably have a target real rate of return—that is, above inflation—of 3.5 to four per cent, and therefore an actuarial assumption of three to 3.5 per cent. Coward had used three per cent. I might note that a higher assumption means that lower contribution rates are required, and it also means the past deficit is lower.

He also suggested a startup, or investment reserve fund, of about \$400 million, paid by the government to encourage partnership. He said that this fund could be used to do such things as prepay for pension reform required by the recent

changes to the Pension Benefits Act, to moderate the contribution increase and/or to create an investment reserve fund.

Where his report came into new territory was that he looked very closely at alternative ways of governing the fund. In particular, he was attracted to a full partnership arrangement or a member-run one, but particularly a full partnership, and he tied those concepts to the sharing of risks and rewards. He recommended that discussions take place with representatives of plan members on these concepts and he noted the advantages of full partnership, that the interest would be coincident and that there would be less misunderstanding and distrust.

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In September, the Treasurer and the Chairman of Management Board initiated discussions with representatives of the public service unions and the Ontario Provincial Police Association. The scope of these discussions on the governance side was basically to discuss the possibility of moving to a full partnership arrangement, making it clear that this involved sharing surpluses and deficits, and joint fund management; in other words, a joint board under such an arrangement. The Treasurer also suggested that concepts for joint decision-making, including negotiability, be considered at that time and he indicated a willingness to consider splitting the pension plan to establish, for example, a union-only plan.

In terms of funding, his conclusions in setting up the negotiations were that it was necessary to move to full funding, but he was willing to discuss the magnitude of the contribution rate increase required. He was willing to go through where we might have differences in actuarial assumptions. He also suggested that discussions take place over who should pay for the past deficit. He noted that in view of the large financial commitments likely to be entailed, he could not see proceeding with the Slater startup fund.

On investment, he suggested that we discuss where these funds should be moved to market. After quite a few meetings no agreement had been reached. Some representatives indicated they were unwilling to pay higher contributions without significant benefit improvements. The problem with significant benefit improvements is essentially that when you make a benefit improvement it makes the contribution rate even higher, and our calculations suggested that the contribution rate being proposed was required.

There was some ambiguity regarding risk-sharing. It was clear that surplus-sharing had

appeal but it was not clear that people were willing to share deficits, and there was a demand for binding arbitration on all pension matters from some parties. There are a couple of difficulties with that. First of all, these are very large funds we are talking about. I believe the current assets of this fund are in the range of \$6 billion. That is an awful lot of money to have at stake in an arbitration. The government is already proposing to commit quite a bit of money to paying for the past deficit. There is also the question of the context for any such arrangements since at the moment working conditions, that is, benefits, are determined separately from wages. I believe that later on the Human Resources Secretariat people will be covering this area more fully.

In January 1989 the Treasurer, having had a concluding meeting with the interested parties, announced that he felt he had to proceed with the financial reforms due to the deteriorating situation in the indexation fund, but that these different governance arrangements would be left open for the future.

The 1989 budget provided for the financial reforms on the basis that the basic and indexation funds would be combined and fully funded. The government would pay the past deficit over 40 years—it was then estimated at about \$1.7 billion—and a schedule was calculated that would grow with the payroll, not flat each year like a mortgage. The fund would be permitted to invest in the market in the future and it would be administered by an arm's-length board. The matching contributions would rise by one per cent. Because there had been no agreement, it was also presumed that government sponsorship would continue for now.

On page 14 you can see the magnitude of the financial impacts. In particular, I draw your attention to the last column which shows the approximate amount that is being committed to pay for these plans by the government over the next few years.

In terms of the impact of the one per cent contribution rate on plan members, the exact impact is likely to be modified by the fact that these contributions are tax deductible. The tax savings will obviously vary depending on whether there are other sources of income a plan member has, and to some extent, although a lesser one, whether he has dependents.

Finally, the reforms contained in Bill 36 specifically: First of all, all components of these funds are put together; that is, the basic and the indexation fund are combined. There is also a

supplementary account for an early retirement benefit in the consolidated revenue fund into which the government and the Ontario Provincial Police Association pay extra. That would be transferred in as well. Plus, there are the liabilities on behalf of those who retired before 1976. These liabilities, as I mentioned earlier, are not being funded at the moment, so by transferring it in and paying it as part of the past deficit, the government will in effect be funding these liabilities.

A new Public Service Pension Board is to be established on 1 January 1990 with responsibility for both plan administration, that is, the paying of the benefits, the collecting of the contributions, doing the actuarial evaluations and all those kinds of things, and for the investment policy and investment administration.

The custody of the fund is transferred to the Public Service Pension Board on 1 January 1990 through the issuance of debentures. This fund, as I mentioned earlier, is now contained in deposits in the consolidated revenue fund. These will be converted to debentures on the basis of the assets that are there plus the interest that has accrued during the year up to that point.

The matching contribution rate paid by the government and plan members increases by one per cent on 1 January 1990, which is lower than the calculated contribution rate; a 1.38 per cent increase would be required. The reasons for this are, first, that the one per cent that earlier calculations had suggested was of about the right magnitude and that was the one that had been discussed with representatives of the plan members. Second, there was some question whether a higher rate might be inappropriate, because when the board does its calculations it will be reviewing the demographic assumptions in more detail than we had time available to do. As a result, it was decided to stay with the one per cent.

The government will start to make payments for the past deficit on 1 January 1990. These payments will be based on the preliminary estimate of the past deficit being \$1.85 billion. The other financial aspect is that the board will need to be assured that full funding is met, so the board will supervise the initial valuation which will establish firmly the past deficit that the government will be paying over the 40-year period.

Mr McLean: I would like to know the total contribution per year and your distribution of the fund paid out each year.

Mrs Tychsen: For 1990, the total contributions from employers and employees would be \$416 million and the total benefit payments would be \$437.5 million.

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Mr J. B. Nixon: A point of clarification with respect to Mr McLean's question: You used the 1990 year and that assumes there is the adjustment in the contribution rate in the amount of one per cent by both parties to the pension plan. Does that include a payment from the consolidated revenue fund to eliminate the past deficit?

Mrs Tychsen: That is separate. That was not included in the \$416 million, but I do have that available. It would be \$88 million for the 1990 year in addition to the \$416 million.

Mr J. B. Nixon: If we excluded the increased contribution rates, what would be the revenue going into the pension plan for 1990?

Mrs Tychsen: I do not have those calculations in front of me but I have them available. I can get them.

Mr J. B. Nixon: Can you give me a rough idea now? I will not hold you to it, I just want to get a—

Mrs Tychsen: I had better not speculate but I will get the calculation for you in a moment.

Mr J. B. Nixon: Do you have the 1989 year, prior to the adjustment in the contribution date?

Mrs Tychsen: Again, we do not have it with us but I will get that momentarily.

Mr Morin-Strom: One brief question first: Why the decision to pay the past deficit over 40 years when the recommendations, particularly from Mr Slater, have been to pay it over a much lesser period of time.

Ms Bouey: It was really due to the magnitude we were dealing with. I might note that faced with similar problems, Quebec chose 50 years and Massachusetts chose 40 years. It basically is because the amount is so large.

Mr Morin-Strom: But surely we are not dealing with 40 years of pension benefits to existing employees.

Mr Macnaughton: It varies considerably. You are talking in many cases about a 60-year period for someone who is now 21, who will be retiring in 44 years and may live for 20 years after that. We are talking about paying benefits way into the future.

Mr Morin-Strom: But the deficit is not on somebody who is 20 years old.

Mr Macnaughton: No, that is right.

Mr Morin-Strom: The deficit is on someone who is already collecting a pension or is about to collect a pension.

Mr Macnaughton: The deficit is in respect of service before 1990.

Ms Bouey: A lot of people would have put in 30 years of service before 1990 and would be covered by this. Part of it, they would have paid to lower contribution, and part of it, there would have been no contributions made for this benefit.

Mr Morin-Strom: The other thing is that if you are running a second mortgage and spreading out the payments over 40 years, the amount per year—is it not just marginally less that you are saving than if you paid it over 25 years, for example?, In fact, would there not be considerable savings if you paid it upfront?

Mr Macnaughton: That would be true in level dollar amounts like a mortgage, \$100 a month. We are not. We are paying it as a percentage of payroll. It is estimated at the moment this would be about 2.9 per cent of the future payroll for the next 40 years. When you have a mortgage, basically the payments in real terms are the highest in the initial year. As time goes on, the mortgage payment is level, but your income goes up. What is being done here is that this is a percentage of payroll which is assumed to rise over time, so the payments rise by one per cent more than inflation every year. They start lower and get higher every year.

Mr Morin-Strom: In effect, the past deficit increases for the initial years. You are not even making a dent on the past deficit.

Mr Macnaughton: The value of the special payments pays the deficit by the end of the 40 years, but it is true that in the initial years it rises somewhat.

Mr Morin-Strom: You are really not doing anything to cut the deficit in the initial years. You are not even keeping up with what the interest rate on that deficit is going to be on that kind of a payment schedule.

Mr Macnaughton: By the end of the 40 years, it is paid. In the initial years, it is true that we are not covering principal.

Mr Morin-Strom: Why do you want to penalize taxpayers 20, 30 or 40 years from now with the bulk of payments rather than bite the bullet on it now? It would cost a lot less than what it is going to cost in the long run.

Mr Macnaughton: I guess it is a question of how much taxpayers pay today as opposed to taxpayers paying in the future. In the alternative,

in level dollar amounts, the amounts to be paid right away would be dramatically higher. I guess there is a judgement about how much you want the taxpayers to bear today as opposed to later.

Mr Morin-Strom: Let's look at exact figures. In 1990, I see you have a schedule of monthly payments of about \$7 million a month. It looks like some \$80 million is going to be paid on this in 1990. Could you tell me how many million in 1990 and how many million will be paid in that 40th year? You will make the first payment next year?

Mr Macnaughton: I do not have the payment in year 40. We can certainly give you a schedule of the amounts, which rise every year by inflation plus one per cent.

Mr Morin-Strom: I would just like to hear roughly what that is going to be.

Mr Macnaughton: In 1990-91 it is \$82 million; in 1991-92 it is \$86 million; in 1992-93 it is \$92 million; in 1993-94 it is about \$97 million.

Mr Morin-Strom: By the 40th year, what are we looking at?

Mr Macnaughton: I can find out for you; it is \$1 billion something.

Mr Morin-Strom: Over \$1 billion.

Ms Bouey: It is important to remember, though, that we are talking what we would call nominal dollar amounts; in other words, all prices will be going up in that period. When we talk about \$1 billion then, it is sort of like what you pay for Coca-Cola now versus what you paid 20 years ago in terms of how much of it is essentially a burden. It is the same percentage of payroll as it is today; it does not change on that basis.

Mr Macnaughton: It works the same as the basic contribution to which you are applying a level rate to a rising base. It is the same sort of idea as the contributions. We can give you the number for the 40th year.

Mr Morin-Strom: It just seems to me that you are putting an unfair burden on future taxpayers and future governments in order to let the current government off as easily as you possibly can. Say it is \$82 million as an annual payment in the first year, and then you have an annual payment 40 years from now from a deficit problem that many of these reports seem to indicate was a mismanagement problem on behalf of the government of recent years. That is putting a big burden on future governments as a result of mistakes of past ones.

Mr Macnaughton: They are equalizing the burden. The amount paid this year is 2.9 per cent of payroll. The amount paid in the 40th year will also be 2.9 per cent of payroll. It is a question of the nominal real dollars that my friend was talking about. The burden is being equalized over time.

Mr Morin-Strom: But this government is going to take four years of that burden and pass on 90 per cent of the burden to future governments that will have to pay for it.

Mr Kozyra: I am referring to the chart on page 8. I guess it reflects the change in the age of the population and so on. I am wondering how much you took into account projections that the Ontario population will increase 30 to 40 per cent, say in the next 25 years, and how that then perhaps reflects on some immigration policies as to the proportion of ages of people we welcome to Ontario and how it reflects—if you go outside the public service into, specifically, education, there is the expansion we are seeing now in demand for classrooms, which then is reflected in demand for more and more teachers. Probably they will come at a relatively younger age and stay in long enough to pay substantial benefits. I am wondering how that relates to this chart.

I am assuming all those things were taken into account, but perhaps you could elaborate.

Ms Bouey: First of all, I might note that this is the public service population only; that is, it is people who work in the public service or have retired from it. It does not include teachers because that is a separate plan.

Mr Kozyra: Is that chart more dramatic or would it help to improve this one? This looks pretty grim.

Ms Bouey: Just one second; I think we have that under the second tab. It is actually more dramatic. If you look under tab B, page 5, as you can see from that chart, the ratio has dropped from somewhere close to seven to one and will continue to drop to about two to one for the teachers.

Mr Kozyra: And that takes into account the dramatic growth in Ontario's population.

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Ms Bouey: Both those calculations, I believe, assume that the working population of the public service does not change. The reason for doing that is because there are always policy decisions at any given time about how many more public servants you have for each increment in population. This is a standard way, I believe, that actuaries look at these kinds of questions because

this way you can be sure that if there is no change, your planning decisions are appropriate; you are not relying on growth which may not occur.

Ms Oddie Munro: I am looking at page 12, under pension discussions. In the period between September 1988 and January 1989, were there no further discussions between the Treasurer (Mr R. F. Nixon) and the representatives of the public service and teachers' plans? That is my first question.

Second, if there were, and even if there were not, is it fair to say that there is still no agreement and there was no movement on the problem areas?

Third, is there any reference here to the reasons—I heard what you said, but are there any other detailed reasons—why the demand for binding arbitration was not in keeping with fiscal accountability or whatever the phraseology was?

I am just wondering if there is anything in either one of these documents that I could refer to.

Ms Bouey: Okay. First of all, could I just check those dates in the first question?

Ms Oddie Munro: Between September 1988 and January 1989, were there any further meetings?

Ms Bouey: Between September 1988 and January 1989 there were quite a few meetings. I can just give you a quick illustration and the dates. There were meetings on 27 October, 8 November, 9 November, 17 November, 29 November, 1 December, 2 December, 4 December, 8 December, 11 December, 12 December and 16 December.

Most of those meetings—in fact, all but the last—took place with a working group of officials rather than with the Treasurer himself, although the last one was with the Treasurer. There was quite an effort to resolve problem areas. I might note, too, there was a subsequent exchange of correspondence, I believe around March 1989, about some of these matters.

I think it is fair to say that there is still a significant gulf between the parties on these matters.

In terms of the arbitration question, I think some of the reasons are given in the budget paper. I am just trying to remember exactly what is in here on that. If you look at page 11, in the second paragraph under tab B, I think you will see a few of the reasons that are given there.

It is perhaps important to know what the government's position was at that point. That was, that most of the matters that would be dealt

with on a day-to-day basis in terms of administration of this fund and the investment policy under a partnership would be dealt with by a joint board that would have a neutral chair who could vote to break deadlocks. So there was a built-in deadlock-breaking mechanism.

In terms of that proposal, what was left outstanding were benefits and contribution rates. The government is already committed to paying something like \$1.85 billion even before the higher contribution rates in terms of this plan.

There are a number of concerns, I think, about arbitration in a pension process. One is just to get some sort of consistency of costings of the various kinds of proposals. Each time one has to figure out what a benefit costs, one has to make a lot of actuarial assumptions, and there is certainly scope to make ones that are perhaps more optimistic than the board might be comfortable with in terms of ensuring full funding. There is obviously a worry about an arbitrator having to deal with that kind of problem, trying to decide whose assumptions are right in those kinds of situations.

Most arbitrators do not have experience in dealing with pension matters. These things are far more costly than a particular wage increase in a particular year. They endure for a number of years. Plan members would not be very comfortable if they found their benefits were sort of fluctuating between one round of negotiations and another, based on different preferences of arbitrators.

There are a lot of criticisms in the literature, if you like, of the problems arbitrators would face in this if there were two competing demands in terms of what should be done. There might be a certain temptation just to split the difference, which might not be very appropriate on a pension-type issue. But the basic demand was also involving even things like the investment policy of the fund and we could not see that putting that before an arbitrator would be consistent with the fiduciary responsibilities of the board.

Ms Oddie Munro: When the various representatives of the public service and teachers' plan members talked with the Treasurer, did they provide literature or correspondence justifying or supporting their argument? I am just wondering where it is in the document, that is all.

Ms Bouey: Yes, in terms of literature they provided, I can go back and look. There might have been a couple of arguments in a letter that Mr Clancy wrote the Treasurer, but that is the

only thing I can think of that was explicit in terms of what they—

Ms Oddie Munro: I am just trying to be prepared for what will obviously be another raising of the questions.

Mr J. B. Nixon: I just want to review briefly a couple of elements of your presentation. You state that the problem—clearly identified, and which this legislation attempts to remedy—is that the indexation fund will be exhausted by what year?

Ms Bouey: According to our calculations, 1999.

Mr J. B. Nixon: Okay, and when was this problem identified?

Ms Bouey: Those particular calculations are as recent as this year. There has been knowledge, I think since the inception, that at some point the fund would run into a problem and contribution rates would have to be raised.

Mr J. B. Nixon: When did government formally decide to review this matter?

Ms Bouey: I believe when the Treasurer announced it in the May 1986 budget.

Mr J. B. Nixon: Okay. The source of the problem, you suggest on page 6, results from two decisions.

Ms Bouey: Yes.

Mr J. B. Nixon: One was in 1975, if I can interpret, when everyone thought that just prior to an election indexation of public servants' benefits would be a wonderful thing to do and suggested that we could pay as we went.

Ms Bouey: I cannot comment on the motivation. The Coward report, though, does note that to have fully funded the benefits on a going-forward basis would probably have cost somewhere more in the neighbourhood of 1.5 per cent, rather than one per cent, from each side.

He also points to the fact that there was a sizeable upfront cost. It does not look very large in terms of the magnitude of the current deficit now. It was going to be fully funded. The other factor he mentions is that about two years earlier the federal government had decided to set up a similar kind of regime for its pensions.

Mr J. B. Nixon: The second source of the problem is that the decision was taken just prior to the 1975 election to provide all these benefits, fully indexed pensions, retroactive for all existing pensioners.

Ms Bouey: Yes.

Mr J. B. Nixon: Even though none of them had contributed to a superannuation fund at all.

Ms Bouey: Yes, that is right. Up to that point adjustments had been made on an ad hoc basis, but there was no contractual arrangement, if you like, to provide indexation.

Mr J. B. Nixon: Okay. It was in 1976 that the Treasurer said effectively, "I am concerned about this and I am worried about the viability of this superannuation fund."

Ms Bouey: In 1986, yes.

Mr J. B. Nixon: In 1986, thank you.

The Vice-Chair: Thank you. If there are no further questions, we will then allow you to carry on with your presentation.

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Mr Morin-Strom: Is that the end of the completion of the book? They have not addressed some of the actuarial assumptions in here. Are we getting a presentation on other aspects of this book?

Ms Bouey: You will certainly be welcome to ask questions about it.

Mr Morin-Strom: I would like to ask if we could get a layman's explanation of the actuarial assumptions that are involved and how critical, in particular, are changes in assumptions with regard to inflation rates and rates of return, particularly the term "real rates of return," which you say are very critical; whether you assume it is three per cent over inflation or 3.5 per cent or four per cent, and how big a difference that makes on the fund's current projected deficit, or what the level of contributions would have to be based on various return assumptions.

As well, I guess I would like to hear what other pension funds have actually achieved in terms of real rates of return and a comparison of what these pension plans have achieved historically in real returns, the public service pension plan or the teachers' superannuation plan, versus others. One of the big issues here is versus a market investment pension plan, which has a diversified portfolio; what the historical record has been and what assumptions you have then built into your analysis. It seems to me some of those issues are absolutely critical.

Mr Brophy: I am just going to jump in somewhere. You have a lot of questions there.

I think the first key is the real rate of return and the rate of inflation. The liabilities are not quite so sensitive to the actual inflation rate because it has two impacts on a funding basis; not on an actual, but on a funding basis. The first thing is, you assume that salaries will be increased with inflation plus an increment. You also make an

assumption that investment return will be inflation plus a certain increment.

The key impact on your liabilities with respect to funding is the net difference between those two assumptions: the net salary assumption and the net nominal interest assumption.

Obviously, the real rate of return is the big portion of the investment return that you are assuming. If you make the assumption that instead of using a three per cent real rate of return, you jump to, say, a four per cent real rate of return, you are not changing the cost of the plan, you are simply shifting the cost. If you obtain a three per cent real rate of return and you assume four per cent, you will generate liabilities in the future that will have to be funded in the future. If you assume three per cent and you earn four per cent—the reverse—you will reduce your contributions in the future because you are generating surplus funds. What you are doing in shifting your real rate of return to the more optimistic assumption, if you do not achieve it, is simply shifting your costs further out into the future. I guess it is comparable to your argument before. Try to take as much of it today as possible and not be too optimistic.

Ms Bouey: If I could just interject there, I think what John is saying is that the higher the rate of return assumption you make, the more risk you are assuming that you are going to take on. With more risk there is more chance you will not make your target and therefore a deficit will be generated for substantial periods of time.

Mr Brophy: That is right, there are two issues. The first issue is the funding assumption. The funding assumption is just a whole set of a series of assumptions with respect to what may happen in the future. The second is what actually happens. When we get to the actuarial assumptions—when we look at something, we try to be realistic. We may add a margin of conservatism to those assumptions. Generally, in the private sector, a reasonable margin of safety is added to that realistic assumption. But it is an assumption.

What actually happens is what will drive the contributions in the future. Historically, a three per cent to 3.5 per cent real rate of return anticipates some equity component of, say, 40 to 50 per cent or 55 per cent of fixed income, the remaining portion of the assets. If you want to use a four per cent real rate or something higher, using historical numbers—and I am not looking at the last 10 years but longer periods of time—you need a significant equity component: common stocks, real estate, etc.

Obviously the more common stocks you incorporate into your portfolio, as Kathy was saying, the more volatile your rates of return will be. If you are going for excess returns, you have to take extra risk. Looking at long periods of history, three and a half per cent is achievable with a realistic and prudent, you might say, investment policy. If you want to earn more, you have to add to your risk.

Mr Macnaughton: There is a summary on page 11 of tab C which looks at four pension portfolios and what kind of returns would have been earned over various periods of time in the past. The basis of comparison there is a portfolio of Treasury bills, which are called the most risk-free assets. As you can see, as the proportion of equities and higher-return assets increases, the rate of return increases, but also the risk factor, which is the chance of loss if the volatility of the series goes up. The first column, the 36 per cent equities, is from Statistics Canada's survey of private sector pension funds. During the 1980s the typical private sector pension fund has had about 36 per cent equities, from 1980 to 1987. That has changed over time. Back in the 1950s most pension funds were three quarters bonds and over time they have had fewer bonds and more equities.

Mr Morin-Strom: So at 36 per cent, I guess on the longest term here you have 3.446?

Mr Macnaughton: That is right.

Mr Morin-Strom: While at 70 per cent equity it is 4.27. You have said you have used a range of three to 3.5. Does that mean you have used three for part of the period and 3.5 for part of the period? Have you used 3.25? What specific real return are you assuming?

Mr Macnaughton: The plan is valued at three and a half per cent in the long term.

Mr Morin-Strom: And if that was changed by half a point up or down, what impact would that mean in terms of what contribution would be needed? You are asking now for an extra one per cent from employees and from the government, you are saying at three and a half per cent. If it was at four per cent, what would the contribution be; if it was at three per cent, what would it be?

Mr Macnaughton: We would have to get you the exact figures, but it would have two impacts: it would lower the required contribution rate, but it would also reduce the past deficit.

Ms Bouey: Basically a higher return assumption lowers the contribution rate and the past deficit. Three per cent versus 3.5 would raise the

required contribution rate and the calculated past deficit.

Mr Macnaughton: I guess just to give you a rough sense, the Coward report called for about a two per cent increase based upon a three per cent real rate and some other things—changes in salaries, twice as much—but it would be less than the one per cent required. If it was four per cent real, we could find that out for you. But as I said, that also would mean significant risk of future deficits.

Mr Morin-Strom: So if it meant a one per cent difference, if in fact in the long run you achieved four per cent, is it possible that no increased contribution would have been required?

Mr Macnaughton: We can give you the exact figures. I am not sure it would be zero, but certainly less than one.

Ms Bouey: I think the interesting point here, though, is that such an assumption would be well outside the bounds of what is usually assumed for valuing such plans.

Mr Morin-Strom: Well outside of which?

Ms Bouey: It is well outside the bounds that actuaries would normally use for valuing pension plans—a four per cent assumption.

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Mr Morin-Strom: Would there be a difference then in what an actuary—there is a conservatism that an actuary builds into his assumptions. One might say that you might want conservatism more in a company's pension plan than in a government's plan because a government is there in the long run and probably there is a better expectation that governments in fact should be looking in the long run.

You are looking in the long run in terms of 40 years to repay the fund. You are presuming there is going to be revenue there for 40 years to repay the existing deficit, which we would never expect in terms of a private sector firm in repaying its debts. I think they have to do it over 15 years. One would think that governments would have a tendency to work on a more realistic assumption as to what the return would be than a private sector actuarial consideration might be.

Ms Bouey: That has been taken into account, actually, in the 3.5 per cent, but I think going beyond that, the probability of having deficits in the future goes up substantially, so the question is, do you want to pay now or have somebody pay later? It does not change what the benefits are

going to cost. We just do not think four per cent is attainable in the long term.

Mr Morin-Strom: The results show it is possible it is. If it were, then the contributions presumably would go back down.

Ms Bouey: There is another aspect here. We are talking about a fund that is very large, in terms of the trustee pension funds that are quoted in the Statscan study, and as a result, it is very hard for a fund of that size to outperform the market.

Mr Brophy: There are two quick issues. One is that normal actuarial valuations for the private sector would fund on a real rate of return of approximately two to three per cent. They may set a target for their investments of about 3.5, that is what they hope to accomplish, but they will fund on a more conservative basis. The 3.5 per cent would not be as common in the private sector, although that is definitely what small private sector plans would be aiming for. It is also a cost shift if you assume anything higher.

The Vice-Chair: Is it clarification, Ms Hošek?

Ms Hošek: I just wanted to add something here for Mr Morin-Strom. One of the major tasks of the board will be constantly to monitor the difference between what the plan needs as a contribution and what is actually happening in the performance of the investments, so that is a long-term process. In fact, one of the main responsibilities of the board is to look at the discrepancy or the pattern relating the contribution rate and the rate of return of the fund. Over time, decisions will be made based on actuarial valuations on the state of the deficit. The law requires that to happen at least every three years. It may happen more often in the case of this fund.

It will be somebody's responsibility always to be watching exactly what you are talking about. I think the legislation has taken the tack of a somewhat less conservative approach than in the private sector because of the issues that you have raised, but clearly it has also taken the decision that to be enormously optimistic is not a very sensible thing to do when you are talking about people's future pensions.

Mr Morin-Strom: Can I follow up on that?

The Vice-Chair: You can, and we would like to get on with the second part of the presentation, so if there is—

Mr Morin-Strom: I thought we had all day on this.

The Vice-Chair: Well, we do, but I do not know the length of the presentation, so perhaps

somebody can clue me in on that. What are we looking at for Management Board?

Miss Clark: The presentation will only take about half an hour and there will be questions after that.

The Vice-Chair: All right, fine. Go ahead, Mr Morin-Strom. Sorry.

Mr Morin-Strom: I guess what this brings up, though, is that if the actuarial assumption is one based on conservatism and the actual record turns out to be better—in fact you have historical records here which seem to indicate the possibility of getting higher returns in the longer run than what the actual assumptions are likely to be—that obviously would generate surpluses in the plan.

Of course, there is a lot of criticism of the private sector that the funds going in perhaps are 50-50, but then the private sector is trying to take those surpluses back out. One of the concerns of employees is that there is a built-in bias in favour of companies in private plans.

In this case, if there is any suggestion that the government has the right to the surpluses, on the basis of conservative actuarial assumptions, it really does not seem fair that employees should pay 50-50 of the contributions to meet assumptions which in the long run, because of that conservatism, will actually result in surpluses appearing and then those surpluses become the property of, potentially, the government.

Ms Bouey: We certainly appreciate that concern. I think, though, that it is important to bear in mind the other side risk: If the rate of return turns out not to be achievable for this fund and the amount that the government is committing to pay for the past deficit as a result is not enough, that is not a very good situation either.

In terms of the 3.5, we feel that that is a pretty good point of balance between those two kinds of interest. As Ms Hošek has mentioned, in the future, every time an actuarial evaluation is done, the required contribution rate will be revisited. If it turns out that the world has changed quite fundamentally and four per cent is really quite a valid thing to assume, that will show up quite quickly.

Ms Hošek: The only thing I would add to that is that, because this fund will be subject to the Pension Benefits Act rules, it will be required that when someone gets a payout of his pension, he will not have spent more than 50 per cent to get that. In other words, there is a protection which makes sure that the payout will not be based on more than 50 per cent contributions and that is also assumed in this.

Mr Macnaughton: I think it is important to understand the volatility in the highest-risk fund. You are talking about a possibility of earning four per cent in the average over this 30-year period we looked at. We are talking about a loss in real terms in one year of 25 per cent at the bottom, and again in real terms, 30 per cent. That makes for a very volatile funding.

The Vice-Chair: Any further questions? Seeing none, thank you very much, Ms Bouey, and your team. As a presentation, it was very informative.

I understand that we will now have a presentation from Management Board staff. Ms Hošek, as they get seated, perhaps you could introduce the team.

Ms Hošek: Yes. What I will do is introduce Phyllis Clark, who is the director of the pension policy branch of the Human Resources Secretariat, and ask her to introduce the rest of her team, if I might.

MANAGEMENT BOARD OF CABINET

Miss Clark: To my right is George Cordahi. He also works with the Human Resources Secretariat, pension policy branch; and Wendy Gauthier.

We are going to be addressing a blue book, and I have prepared slides. I would just like to comment that the slides cover the first section in this book. The second section is excerpts from the act. I know that you all have copies of the act, but I think that these are useful because they highlight the roles of the minister, the Treasurer and the board, respectively. I am not going to deal with those specifically, but I think in terms of governance it is a quick reference to find out what the responsibilities of those three are.

The other things that are numbered 3 and 4 are also excerpts from the act and what they do is give you quick references to where the subject areas that we are going to be addressing in the presentation actually are in the act.

Finally, there are questions and answers which we supplied at the initial reading of the bill and some other questions that have arisen since then to which we have composed answers. The last item is a pension update which we sent out to all our plan members to give them some idea of the proposals in the bill. We thought that would be useful for you as well.

I will begin with section 1. What I would like to do is just outline what the current structure is so you get some idea of the basis that we are working from, and then you can see what we are proposing to do in the bill.

What we have now is a Public Service Superannuation Board. This is an administrator in the Pension Benefits Act sense. By that what we mean is that there are certain rules in the Pension Benefits Act that an administrator must follow in terms of communications and administering a plan. That is what the Public Service Superannuation Board currently does. It is composed of four members and it is responsible to the Chairman of Management Board of Cabinet.

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It is also responsible for adjudication. In a pension plan there is a wide range of issues that require adjudication on a regular basis. Those include things like survivor benefits, determining who is actually eligible for a survivor benefit and determining what kinds of refunds are available to people under certain conditions. There is a wide range of questions that come up to this board on a regular basis to which they must respond.

There is also a superannuation adjustment fund committee and this addresses specifically the public service superannuation fund. It is appointed under the Superannuation Adjustment Benefits Act and it chooses the term to maturity of the public service superannuation fund debentures. They meet on a one-year basis.

In addition to that structure, we have regulators. We are like any other pension plan. We have to obey the laws of, first of all, the Pension Commission of Ontario, and that is the Pension Benefits Act, and second, the Department of National Revenue Income Tax Act. We are registered with both of these groups. That will not change. The way the act is set up now, we will still be subject to regulation by those two bodies.

Still under the current structure, there are several bodies that are involved in the administration and control of the pension plan. First of all, we have the Chairman of Management Board of Cabinet, and this is in his role as employer. This is his pension plan for the people who work for the government and he is responsible for the legislation. The two pieces of legislation that are currently outstanding are the Public Service Superannuation Act and the Superannuation Adjustment Benefits Act.

Then we have the Human Resources Secretariat. This again is the government in its role as employer and we are responsible for policy for this pension plan. We also have discussions with employee representatives on the plan. We do the actuarial estimates of costs. This is done by the

actuarial services branch, which is the official plan actuary, and we share responsibilities for communications with several groups, one being the Ministry of Government Services and another one the benefit co-ordinators.

The Ministry of Government Services currently does our administration. This is the day-to-day issuance of cheques and collection of contributions. They also do training for the benefit co-ordinators and communications. They are responsible for the accounting as well.

Treasury is the investment and custodian officer. They do the accounting policy and report the levels of the funds in the public accounts. They also monitor the costs in the role of trying to keep the general costs of government in line.

The plan covers the ministries and the several agencies, boards and commissions which have benefit co-ordinators, and this is the actual link with the people in the plan. So that is where we currently are.

The proposed structure in Bill 36 changes this in a great fashion. What we are doing is creating a new board, the Public Service Pension Board. Most of the articles in the act that are concerned with the actual creation of this board are beyond section 28 in this first schedule.

This board will now become the administrator in the Pension Benefits Act sense. It will be responsible for making sure that the rules and regulations of the Pension Benefits Act are complied with. It will also be responsible for adjudication, so it will take over from the Public Service Superannuation Board, and if the bill is passed, that board will be dissolved. The PSSB will be dissolved and the new board will be put in place.

This board will be responsible for investment, and again that will be in the sense of the Pension Benefits Act where everybody must exercise the care, skill and diligence of a prudent person in the investment of these funds. It will retain the official plan actuary and it will be responsible for the communications and training on the pension plan. It will also do the accounting for the fund and will be responsible for the auditing.

Meanwhile, back at the government, there will be a change in some of the roles of people but some of the roles will remain the same.

The Chairman of Management Board of Cabinet will continue to be the employer and responsible for the legislation. He will also have the responsibility of reviewing the valuation.

The Human Resources Secretariat will continue to be government as employer and continue to be concerned with policy for its pension plan.

It will continue to discuss with the employee representatives what is going on. It will do actuarial estimates for costs for the employer, but this will not have any impact on the actuarial estimates that are done by the new board; and we will be responsible for communications as an employer. This is only in the sense of if we ever want to tell our own employees what the pension plan is like.

The Ministry of Government Services will be on contract initially to do the administration of the fund. This is not written into the act, but this is what we plan to do if the act passes, to ease transition.

The Treasury will be responsible for the transition of the assets—I think that is clearly outlined in the bill itself—and it will continue to monitor costs in the general government sense. The ministries will continue to have the agencies, boards and commissions there.

So that is the new structure that would be established under Bill 36.

We also have a special benefit account in the public service superannuation fund and I thought I would tell you about that as well. This administers the benefits for the Ontario Provincial Police. They have a special early retirement benefit which operates at 50 years of age and 30 years of service. They pay two per cent of contributions and we match that with two per cent. It is what is called terminal funding. Terminal funding means that when somebody comes up for retirement, the amounts of money that are required to support their benefits are transferred from the Ontario Provincial Police special benefits account into the main account. We propose to maintain the status quo on benefits and contributions in the new act, but we are going to merge the special benefits account with the main fund, but account for it separately. We will also move to full funding on that account, the

other account.

The governance structure is something that is completely new, in a sense, with the new act. What is interesting about it is that the act is set up to enable us to move to several kinds of governance structures if we so choose.

The first option is government sponsorship, and this is the base case. The bill is written assuming government sponsorship. The government is the sole sponsor and therefore assumes all the risks. We are responsible for the unfunded liabilities and for the pensions if there is a deficiency in the fund for payment of pensions. The rewards are tied with the risk. The way the

act is written, we may use the surpluses to defray unfunded liability payments, then to pay for employer's contributions, or then we may withdraw them, but only subject to the Pension Benefits Act.

The PBA is very stringent in terms of surplus withdrawals. It requires that the greater of two years of the employer's current service costs, which would be currently about \$325 million, or 25 per cent of the liabilities of the fund—and the current calculations of the liabilities of the fund would put that at about \$2.6 billion—the greater of that must be retained as a cushion in the plan before there could be any surplus withdrawn.

So I think you should keep in mind that, first, the whole unfunded liability would have to be paid down, then we would have to keep \$2.6 billion in the plan, and then we would consider if we could withdraw surplus. The chances are fairly small. Any surplus that could be withdrawn under those conditions is the surplus associated only with the employer's contributions. No surpluses associated with the employees' contributions can be withdrawn under the PBA. Also, the 50 per cent rule of the PBA ensures that a person who is contributing to a pension plan—the contributions that person makes plus the interest earnings—cannot pay for more than 50 per cent of his or her pension. So that is another limit on surplus withdrawal.

The act is set up so that there are options to move to two other forms of surplus, risk of governance or risk-reward sharing.

The first is partnership, and we have included the actual articles in the back of this book on partnership. I think it is section 6 in the act itself. I am fairly nebulous about the partnership agreement because we do not really know what that would look like. It would depend on the discussions between plan member representatives and the government on how the partnership agreement was formulated.

I think you can see when you read the act that it is very broad. What it would mean, though, is equal sharing of risks and rewards. This means that we as a government would be responsible for our share of the risks and get our share of the rewards, and the other partner would be responsible for its share of the risks and get its share of the rewards. It would also mean that there would be equal sharing on administrative boards, so the board would be equal representation.

The act also has the ability to move to a member-run plan. This plan would envisage members having all the responsibilities. They would control the board, they would own the

surpluses, they would be responsible for deficits and they would be responsible for pensions or for any deficiencies. So if there was not enough money in the fund to pay for pensions, the members would have to find that money. The government's role would be limited to a given level of contributions, which we would put in.

1130

Another issue that arose during the discussions we had about pensions in the late fall of 1988 was splitting the plan. We have an interesting plan in the sense that it covers diverse groups of people. We cover not only the Ontario public service but some agencies, boards and commissions, and there are several groups of plan member representatives that are embodied in our plan. We have the Ontario Public Service Employees Union, CUPE, the Ontario Provincial Police Association, the Liquor Control Board of Ontario employees, who are represented by the Ontario Liquor Boards Employees' Union, and other unions as well, so there are various options on how we could split the plan.

What OPSEU suggested during the pension discussions was that there would be a union-run plan. That would be a plan that would cover only union members. That would mean that there would be a management or excluded-employee plan on the other side. Conceivably, the OPP could be broken off into a separate plan. There are several examples of possible splits that we could do.

The agreement that was reached was that there would be the ability to split the plan within the act, and that is within the legislation. There are several problems to resolve on how the split would take place, though. Some of them are technical, such as simply how employees would switch back and forth. We would not want to disadvantage persons who wanted to rise from the bargaining unit group to the management group if they thought this would be a lesser plan, or vice versa, if it were a better plan.

Then we also confront the problem of what to do if there are different costs for the same benefits. Could we as employers live with that kind of regime? I think we would prefer to make sure that all our employees have the same benefits for the same costs. We just would have to work out and resolve those problems. Again, that would have to be an agreement between the plan members and the government.

The benefit design portion of this act is contained primarily in schedule 1. I just want to say that we are starting with all the major features of the plan intact. It is a defined benefit plan, so

the benefit is still guaranteed. You can earn up to 35 years of pension credit and the accrual rate is two per cent, so you can get up to 70 per cent of replacement of your income. It is fully indexed, with a carryover if indexation as measured by the consumer price index is greater than eight per cent.

Retirement: Our normal retirement age is 65 years. We have two early retirement factors, 60-20—that is, 60 years old and 20 years of service—or the 90 factor, where your age and service combined total 90. The OPP has the additional 50-30 factor.

We also have disability benefits, survivor benefits and pre-retirement death benefits. Currently, we augment low pensions and would continue to do that.

In terms of introducing new benefits, we have done three things. The first one is to embody the PBA minimums, the minimums that are required by the Pension Benefits Act, in the legislation itself. We have been administering the plan since 1 January 1988 in keeping with these minimums, but the new Public Service Superannuation Act would reflect these standards. These are vesting and locking in. After 1987 it only takes two years to earn the right to have a pension. Before, it was 10 years to earn the right and 10 years plus 45 years of age before your contributions were locked in.

The 50 per cent rule: Employees' contributions cannot be more than half the value of the pension; that is, contributions plus interest earned.

Survivor benefits: We have to provide 60 per cent of a survivor benefit. This is mandated by the PBA. The difference between the 50 per cent which we supply without charge and the 60 per cent is going to be funded by an actuarial reduction to the person's pension.

Pre-retirement death benefits are now equal to the commuted value of the deferred pensions.

We did go beyond the PBA in three areas. The first was eligibility for plan membership. Currently, employees classified as full- and part-time must belong to the plan. Seasonal employees who work the required hours may belong to the plan if they wish to. The required hours are specified by the Pension Benefits Act; that is, 700 hours per year or 35 per cent of the year's maximum pensionable earnings, which is \$27,700 this year. We propose to go beyond that and say that unclassified or contract employees may choose to enrol in the plan as well if they wish.

We have also gone beyond the PBA with marriage after retirement. Currently, there is no provision to supply a pension to your spouse if you marry after retirement, but we propose that pensioners may redirect a portion of their pension to provide for a spouse if they marry after retirement. In order to keep this cost-neutral to the plan, we are going to actuarially reduce the member's pension to pay for that provision.

There are some housekeeping provisions which are mainly updating and changing things to make it easier to administer.

The third change that we have made in benefits that goes beyond the Pension Benefits Act is for the transfer and purchase of past service. Currently, we have different formulae for salary and interest rates to compute the required amounts that you have to pay, depending on when you elect for service.

We are going to do two things with transfer and purchase. The first is with regard to past Ontario public service and we are going to simplify that and base the cost only on the member's current salary. We are removing the three-month restriction for transfers and buy-backs unless it is included in a reciprocal agreement. We are reducing the window for opportunity for buybacks to 24 months, but we are retaining the ability to enter the reciprocal transfer into the plan by reciprocal transfer agreements.

I notice what we do not have here is what we think is the most revolutionary aspect of the transfer and purchase of past service and that is for non-OPS service. What we have introduced there is the ability for a person who has pensionable service in any pension plan registered under the Income Tax Act in Canada to buy back service in our plan that represents the service that he had in the other plan.

We are limited to some extent on that because of the Income Tax Act. A person cannot have service credits in two plans. We have to be assured that the person has transferred his or her credits to our plan only and does not have remaining service existing. The cost for that particular provision will be actuarial cost. We have said "actuarial cost" because we do not want to subsidize people coming into the plan by current contributions from people who are already in the plan.

People will also have the same window of opportunity for buying back that service, 24 months after the first opportunity.

Those are basically the things we have done with benefit design and governance structure in the bill.

Mrs LeBourdais: You have assumed through all this a retirement age of 65. I am just sort of leap-frogging ahead to the days when we do not have a retirement age of 65 or it is either raised or eliminated. How is that going to impact on all this?

Miss Clark: If we do not have a retirement age of 65, I think the other limitation will come into effect where we will only have a certain amount of accrual that you can get. You can get 35 years of accrual now. We would keep that kind of limitation in, where you could only earn a certain amount of replacement income, and it would probably be 35 years. I think the Income Tax Act would keep that kind of limitation in order to protect the amount of income that can be tax-sheltered.

Mr Morin-Strom: Just on the last point about the buying back of pension service, is that right only for pension service that actually got vested, so that they have the right to the pension? Many people in the civil service now may have worked for under 10 years in a private sector firm where they were earning pension credits but did not hit the vesting time of the 10 years and so do not have any funds but were buying into a pension plan and got their contributions back when they left that plan. Will they now be able to buy for that service even though it was not vested in that previous plan?

Mr Cordahi: Yes, they would. We are not requiring that the person must have vested during that period of time; as long as the person was a member, whether a contributor or not.

Mr Morin-Strom: And whether they got the funds back?

Mr Cordahi: If they got the funds back, they would have some funds to contribute towards what we would be asking for.

Mrs Gauthier: The only requirement is that they not maintain entitlement under both plans.

Mr Morin-Strom: So if they had reached the vesting period and then had a right to a pension from that previous service, they would have to get that all transferred in some fashion. Then they would have to buy the additional cost.

Mrs Gauthier: Yes, if there was an additional cost, that is right. They would have to put the additional amount in themselves.

1140

Mr Morin-Strom: You are saying the buy-back would be on an actuarial assumption as to the cost of that service today, I guess, based on wages today and how much that amount of years

would have cost at today's wages. Is that the same assumption as the funds coming out of another plan? Or could it be that there is a considerable additional cost because of that actuarial assumption for the same length of service or perhaps levels of contributions with another plan that is transferring funds to you on a different assumption?

Mr Cordahi: That is what happened but there are two tactics that you ought to consider. First, the plans may not be similar and the benefits provided by both plans could themselves be different. So one year of credit in one plan might be different than one year of credit in the other one.

Certainly the different assumptions in one plan—in the exporting plan, the assumptions could be different than the assumptions we are using. Our standard in making the assumptions for our plan would be not to burden our plan, ie, the other members in our plan, the existing members, with any more costs for any particular individual.

Miss Clark: I want to point out two things with that, though. The first is that people can still transfer service in under reciprocal agreements that we have. We have a considerable number of reciprocal agreements with other public service plans both in Ontario and in Canada so that they can transfer service in under those plans without this actuarial cost arrangement.

I have forgotten what the other one was.

Mr McLean: They could do that in the past, though, could they not?

Miss Clark: Yes, they could and we have maintained that ability to continue to do that.

The other thing I was going to say is that the Pension Benefits Act requires that moneys cannot, the commuted value, be taken out of other pension plans for post-1986 service, so that is money that would be available to transfer into our plan to buy service in our plan. That money could also come from a registered retirement savings plan to buy service in our plan.

Mr Morin-Strom: My understanding of commuted value is that that tends to be a much lower sum. Why do we not, for example, have the Pension Benefits Act or your act insisting that the value that you take out of another plan which has been vested is under the same type of calculation as what you are saying is going to be the cost you are going to impose on the person coming into your plan to buy back that service?

Miss Clark: Actually, since we have the actuary here—

Mr Brophy: There are two calculations and you are quite correct. The commuted value normally in the private sector is the value of the benefit on termination of employment which, on a comparable type of plan to the public service plan, is not based on earnings that the individual may have got at retirement but would be based on a frozen salary at termination. It is also using a market-related interest assumption, which in today's environment is probably 10 or 11 per cent. So when you discount it with the high interest rate and you do not project any salaries, you get a small number.

When you transfer in to the public service plan, it is on a cost-neutral basis to the fund which means there is an assumption with respect to when you are going to retire and what your income will be at that point in time, so the number will be larger by definition because we are assuming certain increases in the future and you are projecting the anticipated benefit that the individual will receive from the public service plan.

Mr Morin-Strom: Is that not a tremendous unfairness then to the worker? Is he not going to have to pay potentially a very large cost, assuming he is never going to get any increases from the salary he left while the new plan assumes that he is going to get increases and wants him to pay for those increases?

Mr Brophy: It depends on your definition of fairness. The question is, what are you buying? You are buying a benefit that you hope to get from this pension plan. The value that has been placed on it is a realistic cost which means you are paying the cost of that benefit. You are not paying a subsidized cost. So you are getting what you pay for. You cannot lose your own money.

Mr Morin-Strom: But it is not real portability.

Miss Clark: Could I point out, though, that you do not want portability at the expense of the other people in the plan? You do not want current members and contributors in the plan subsidizing people who are entering the plan.

Mr Morin-Strom: That may be realistic, but on the other side then, the penalty is going on the old plan.

Miss Clark: No.

Mr Morin-Strom: If you are coming from an auto workers' plan or a steelworkers' plan and you can only get the commuted value out, not the actuarial value, in a sense you have left a bunch of funds there in that plan to support that.

Mr Brophy: You have left potential benefits behind by leaving, that is correct. The auto workers' plan is a little different because it is a flat dollar type of benefit. It is not assumed to increase in the future. Its only increase in the future is through negotiations. This plan is based on salary, which automatically increases benefits each year as your salary increases. But there is no doubt you get what you are entitled to at the point in time of your termination from the prior plan, not what you may be entitled to.

When you come into this plan, on the other hand, the value that is placed on it is a realistic estimate of what you are buying. If you pay less than that, as Miss Clark indicated, someone has to subsidize that and the way the plan is structured, the current plan members would subsidize new members if they did not pay the full share.

Mr Morin-Strom: In cases where there is an agreement—

The Vice-Chair: Can I just interrupt for a minute? I have three other people on this. Perhaps we can come back to you.

Ms Oddie Munro: Just some clarification for my own point of view: What is the suggested membership on the Public Service Pension Board and what is the relationship, just in brief, between the PSPB and the various governance options?

Miss Clark: Currently, since the government is the sole sponsor, the government would make all appointments to the new pension board. Although we did not specify it in the act—we only specified that the board would consist of at least three people—we had intended that there would be plan member representation, and the current proposal is that we would have plan member representation from the Ontario Public Service Employees Union, which would continue the representation that we currently have on the Public Service Superannuation Board.

We would ask a management or excluded employee representative to sit on the board and we would ask an Ontario Provincial Police Association representative to sit on the board. Keeping the balance between government sponsorship, we would then ask at least four members to be government representatives. So the government would maintain the majority of representatives as long as it was the sole sponsor of the plan.

In the future, if we had partnership, we would expect that we would have 50-50 representation on the board, member-run, of course, it would be all member-run appointments.

Mr Sola: I would like some clarification on this surplus that you were talking about earlier. You said there were three steps. The first was to pay down unfunded liabilities, and I missed the other two.

Miss Clark: After you have paid down the unfunded liability, you must keep an amount in the fund equal to the greater of the two items quoted there: the contribution rate, two times the employer's contributions, which is about \$325 million now, or 25 per cent of the liabilities of the fund. Under current calculations that gives us an amount of money of about \$2.6 billion.

Mr Sola: And what is the third step?

Miss Clark: Those are the only two steps. After that we can withdraw funds, but only the amounts of money that are connected with the employer contributions.

Mr Sola: Okay, that clarifies that. Then I would like to get to the marriage after retirement. You say the member's pension will be actuarially reduced to pay for it.

Miss Clark: Yes.

Mr Sola: Supposing there is about a 40-year gap in the ages of the spouses, how do you account for that? If the elder member dies shortly after marriage and you have a 25-year-old survivor, how do you actuarially account for that?

Miss Clark: That is built into the actuarial reduction and then there is an assumption that is affected by age, so the younger the person is, the larger the actuarial reduction would be to the older spouse's pension. It is a direct function of the age of the spouse.

Mr McLean: I would like a clarification, if I may, from these professionals. If I worked for industry for 10 years and there was a pension plan there, I and my employer paid into it equally, I was fortunate enough to get a job working for the government and I wanted to draw out my pension, I could only draw out what I had paid in. Is that right?

Miss Clark: You could draw out what you were entitled to from the pension plan. If you had already vested and had the entitlement to a pension, you would get the pension under the terms and conditions that plan entitled you to. For example, you would probably get what is called a deferred pension now. Then, when you reached normal retirement age, you would get the pension to which you were entitled and you could withdraw it. You could get that as you pleased.

Mr McLean: Yes, but then I want to put what I draw into the government pension. I am going to take a loss because I am not going to get a fair share. I will get what the pension calls for, but in most cases it is a reduced amount. Yet when I buy into the government pension, I am going to be penalized and pay more.

Miss Clark: I should point out that you will have to pay a given amount to enter into our plan that represents the value of what you are buying in our plan, the fair price of what you are buying in our plan. The relationship of that to what you would have got from your other plan is something that depends on the terms and features of the other plan. Since we have a very generous pension plan in terms of the basis for indexation and the other features of the plan, the benefit designs of the plan, you may not get as much money out of the other plan to transfer into our plan.

What we are concerned about solely is that (a) it is a fair price for somebody coming in for what they will be buying and (b) people who are currently in the fund do not subsidize anybody coming in from outside the fund. What we are giving somebody coming in is the benefit to get additional service credits within our plan.

Mr McLean: I understand that, but I guess the point I wanted to make is that pension plans in Ontario in industry are not as generous as they are in government, and there should be an overall type of a plan where you can go from one to the other with no loss, and that is not there now.

Miss Clark: I think that is to some extent what the Canada pension plan does, an industrial plan or a plan covering every person working in Canada, yes.

Mr McLean: I wonder if you could explain the 50 per cent rule a little further with regard to the pension board act.

Miss Clark: What happens is, you are entitled to a certain pension that is worth a certain value. When you retire, there is a computation made to get a value for that pension. Then the amount of your contributions, plus the interest earned on your contributions, is compared to the value of your pension. You cannot have paid more than 50 per cent of the value of that pension with your contributions, plus interest.

Mr McLean: But what about the interest on the government's contribution? Where does that go? Is that part of the plan?

Miss Clark: No, it is just your contributions, plus the interest on your contributions. Whatever the government has put in, the interest or

unfunded liability payments that the government put in, has no bearing on what your calculation. The calculation of the value of your pension is related to the benefit features of the plan. Those are the two factors that the comparison is drawn between.

Ms Hošek: Can I just clarify? What that means is that when you retire, they calculate and make sure that half the money you get, no more than half the money you get, was paid for by you and

the other half was paid for by the government, at least the other half.

The Vice-Chair: Fine, thank you. It is getting near to 12 o'clock, and I understand Mr Morin-Strom has several questions to ask. Perhaps it would be appropriate that we adjourn now until after routine proceedings this afternoon. We will see you again here some time after routine proceedings.

The committee recessed at 1154.

AFTERNOON SITTING

The committee resumed at 1524 in room 228.

PUBLIC SERVICE PENSION ACT, 1989
(continued)

Consideration of Bill 36, An Act to revise the Public Service Superannuation Act.

MANAGEMENT BOARD OF CABINET

The Vice-Chair: The committee will come to order. This morning there were two or perhaps three inquiries made of the ministry staff. I understand that the information is now available to the members and will be passed out to you.

Clerk of the Committee: Two of the three are here.

The Vice-Chair: Two of the three are here? I want to indicate that Mr McLean has indicated that we could proceed without him. Perhaps we will just give you a minute to look that over, and if there are any questions they could be directed to the appropriate person. Are there any questions or would you like to go on with Miss Clark?

Mr Morin-Strom: I have some questions related to the second set of presentations.

The Vice-Chair: All right, perhaps we will do that. If, in the interim, you summarize as a result of this, we could bring the Treasury staff back. Miss Clark, would you come forward, please, with your delegation? As we left this morning, Mr Morin-Strom indicated that he had a number of questions.

Mr Morin-Strom: One item I wanted to get clarification on, and on which there were several questions already, was on the buyback of pension service. I wanted to get some clarification on what these reciprocal agreements mean. As I understand it, when one changes pension service from one plan to another, typically one gets only the commuted value of the pension. You are saying now that for the public service pension plan you want the full cost paid, which may be quite a bit higher than the commuted value for an exactly equivalent plan would be because it would reflect potential inflation in earnings over the balance of the person's career. How would this affect transfers between plans where there is an agreement? Are both valuations done on the same basis or is the person leaving one plan going to have the valuation on one basis and then have a different basis for calculation when he, say, enters the public service plan?

Miss Clark: Each reciprocal agreement is particular, but there are generally double contributions plus interest for transfers. So we would be paying to another plan double the contribution rates it requires, plus interest on them, to buy the service credit. We would expect the same thing coming back. So it has nothing to do with the actuarial value or transfer in that sense, if that is the basis of the reciprocal agreement. If, on the other hand, the reciprocal agreement basis is on commuted value or actuarial value, that is what we would expect to transfer. We do have one reciprocal agreement with Quebec that is on actuarial value.

Mr Morin-Strom: Let's take an example that is totally within your realm, the government's realm, and that is between the teachers' plan and the public service plan. How does the formula work in a case of transfers from one plan to the other?

Mr Cordahi: I do not know exactly about the teachers' plan, but typically in all the transfer agreements, except for the one with Quebec, we stand willing to transfer to the other plan twice what the member has paid into our plan, plus interest. Typically, the other plan would request twice what the member would have paid in the other plan on some basis, but we would supply only double what the member provided to us. If the importing plan requests more than we would be willing to supply, then the member has to pay the difference. If, on the other hand, our plan provides more than the other plan requests, then there would be a payment to the member, a payment not necessarily of the whole difference, but of some amount.

1530

Mr Morin-Strom: My question, though, is on a person transferring. Are both plans using the same form of calculation?

Mr Cordahi: I do not know.

Mr Morin-Strom: For a teacher who has worked for 10 years and who comes now to be a public servant and has 10 years' credit as a teacher, is his form of calculation for the credit he is going to get going to be on the same basis as your form of how much you are going to ask to be in the plan?

Mr Cordahi: I think that the answer is roughly yes, but I would have to get back to that particular pension agreement and see if that is exactly

correct, if it is reciprocal between us and the teachers.

Mrs Gauthier: Do you want us to follow up on that?

Mr Morin-Strom: Yes. I guess I would be concerned if, for example, the basis of calculation of someone going in one direction was on one formula and then going in the other direction it was on a different formula and, in effect, people may be paying both ways. Or, if you go back and forth to the original plan, you have ended up paying both times because there is a difference in calculation formula.

Mr Cordahi: That would not be a typical situation, and in fact most reciprocal agreements have provisions that if you move both ways, you cannot lose.

Mr Morin-Strom: You cannot lose. Okay.

Mr Cordahi: But I have to check back on that particular question.

Mr Morin-Strom: On another area, if there are other questioners—

Miss Clark: Could I just make an additional comment on that? The Pension Benefits Act is going to require us to go to commuted value sooner or later on those transfer agreements, so we are going to have to be in the process of renegotiating those kinds of agreements to a commuted-value basis for reciprocal agreements.

Mr Morin-Strom: Which means the payout will be on commuted value?

Miss Clark: Back and forth.

Mr Morin-Strom: Both ways, and the person coming in will pay based on a commuted value?

Miss Clark: Yes.

Mr Morin-Strom: Oh. Well, I think that would certainly ensure fairness of the system, at least if the calculations were done on the same formula coming into a plan and going out of a plan.

One of the concerns has to do with the government's concern about the amount of public dollars involved when a dispute goes to binding arbitration. My understanding is that the public service is now divided into something like eight wage-bargaining categories and that each of these eight categories is subject to binding arbitration. I would like to know how many tax dollars would be involved in the hands of an arbitrator today in any one of these categories.

Miss Clark: I cannot answer—

Mr Morin-Strom: Potentially on a wage arbitration. I am asking about the wage arbitration.

Miss Clark: I cannot answer for individual categories. That is something that we could probably find out, but the last year's total salary bill for the government was \$3 billion.

Mr Morin-Strom: And how much is the total pension bill?

Miss Clark: You will notice that our pension unfunded liability now is \$1.85 billion.

Mr Morin-Strom: That is the liability, but I am asking what is the annual payment into the pension plan.

Miss Clark: You want just the government, you want just the contribution payments made into the plan as compared to the unfunded liability payments?

Mr Morin-Strom: Well, I guess you could view the unfunded liability payment as a payment in the plan. How much are you projecting as being paid into the plan on an annual basis?

Miss Clark: We will have to get back to you on that. That is something that we will just have to get back on.

Mr Morin-Strom: I guess I am just questioning the magnitude, how much funds are going into pension plans from the government on an annual basis and how that would compare with what is currently on the table in arbitration settlements in terms of wage negotiations.

Miss Clark: I can appreciate what you are saying. I think the differences in the arbitration between the two groups of dollars are that arbitration for salaries makes promises over the lifetime of a contract and arbitration for pensions makes promises over the lifetime of the pension, which is generally a considerably longer time.

It is very difficult to make a promise on a pension and then withdraw it. For example, if you make early retirement promises, it is very difficult then to take them back. On the other hand as well, if you make a concession for early retirement, you do not give it prospectively normally; you give it entirely to everybody who is in the pension plan. So you have also got retrospective changes that come in as well.

Mr Morin-Strom: I suppose we might take examples of changes in the formulas, what percentage the contribution rates are going to be, but if you are talking about changes in the benefit provisions, right now there is a difference, as I understand it, in the retirement age requirements, or combined years of service and age. The 90 factor is currently the situation for the public service pension plan. But I understand the OPP

pension plan has a 50-30 factor, a factor which is really an 80 factor.

Miss Clark: No, it is not an 80 factor; it is 50-30.

Mr Morin-Strom: Well, it means you can retire at age 50 with 30 years service and public servants cannot do that until they are age 60, so there is a 10-year difference in terms of when you can get a full pension for someone with 30 years' service. Could you give us an idea of what the impact on the pension plan of that type of change would be?

Miss Clark: Let me say first of all that you can retire even earlier under the 60-20 provision. You do not have to have 30 years of service; you can retire under 60-20. So that is another avenue for early retirement.

Mr Morin-Strom: You can retire at 60-20? You can retire at age 50?

Miss Clark: No, 60-20. You said with 30 years of service.

Mr Morin-Strom: I am saying, with 30 years service when can you first get a full pension?

Miss Clark: Age 60.

Mr Morin-Strom: That is what I am saying, age 60. But under the OPP's you can get it at age 50.

Miss Clark: That is correct. They pay two per cent extra contributions and we, as the government, match the two per cent contributions, and there is also an unfunded liability connected with their account.

Mr Morin-Strom: Maybe I misunderstood. I had understood that they were paying two per cent and the Ontario Public Service Employees Union was paying one per cent and in fact this bill is asking them to move up to two per cent. So they are moving up to the same formula as the OPP.

Miss Clark: No. What is happening is that the OPP pay two per cent in addition to what they pay into the public service superannuation plan. So their contributions will go up one per cent as well, and they will continue to pay the extra two per cent. So now they are paying nine per cent in total and the government is matching that. In the future they will be paying 10 per cent in total and the government will be matching that, whereas members of the public service pension plan will be paying eight per cent and the government will be matching that.

Mr Morin-Strom: So there is a two per cent difference between the two plans.

Miss Clark: Yes. Could I also say that a 50-30 rule is a less expensive early retirement scheme than an 80 factor, because in an 80 factor you have all the permutations in between. Besides 50-30 you have 55-25, and you can take advantage of all the factors in between.

Mr Morin-Strom: I wonder if you could provide us with figures on the amounts of the contribution holidays that the government has taken out of the plans for the last five years, or has not put into the plan.

Mrs Gauthier: Zero.

Miss Clark: We have not taken contribution holidays.

Mr Morin-Strom: The government has been fully matching the—

Miss Clark: It more than fully matches, because we also pay for people who are on long-term income protection. We pay for their contributions to the pension plan. So we have not only matched what employees have put in, but we have paid more.

Mr Morin-Strom: And that is for all categories of the public service pension plan?

Miss Clark: Yes.

Mr Morin-Strom: I think we have a problem here from one of the members?

The Vice-Chair: We just want to know when your list is going to come to an end. Carry on.

1540

Miss Clark: Could I also mention that we also paid the consolidated revenue fund special payments to augment low pensions? The government had that responsibility as well. That amounted to about \$30 million, I think it was, in addition to the other payments.

Mr Morin-Strom: The funds that are in the plan now—

Mr J. B. Nixon: Did you say "buns" or "funds"?

The Chair: Order, please, Mr Nixon. If you would be quiet, we could get out of here quicker.

Mr Morin-Strom: Was this member at one time involved within the bureaucracy and have some responsibility for the plan?

The Vice-Chair: Would you ask please your questions?

Interjections.

Mr Morin-Strom: Out of the total funds in the plan, can you provide a breakdown of how much of that has come from employees' contributions versus government contributions?

Miss Clark: I am sorry, from which contributions—I just did not hear you—from contributors; employees' contributions?

Mr Morin-Strom: Yes. I think the principle has been matching dollars, but you seem to indicate there are some cases where the government has provided more than matching dollars for, I do not know, people who are already retired where there is insufficiency or whatever. How close are we to being 50-50 right now or has the government put considerably more dollars into the plan?

Miss Clark: You have to remember that we put in unfunded liability payments and the interest has accrued on those unfunded liability payments.

Mr Morin-Strom: We could do it in terms of the total payments and the interest on all the payments or we could just do it in terms of how much the total contributions have been over the years.

Miss Clark: So you mean our contributions without unfunded liability contributions. Yes, we could construct those; those are listed in the public accounts every year under employee contributions. You have to remember, though, that what happens is that the employee and employer contributions flow into a holding account from which benefits are paid, and only net payments are made into the fund, so you would have to say you would credit the benefits as coming from a certain part of those contributions. We can say what the contributions paid by the government and by the employees were. We can say what the net flow into the fund was. We would have to attribute where the benefits came from though, in some sense, but we do have listings of what the contributions into the plan are.

Mr Morin-Strom: The safest way to compare really is to do it just on the amounts that have been contributed.

Miss Clark: I think if you wanted to attribute where the assets came from, you would have to make certain assumptions, but we could be very clear about what the varying ratios of contributions were.

Mr Morin-Strom: There was a provision that said that in no case—there was a 50 per cent—I do not know if I can find this rule.

Miss Clark: Yes, the 50 per cent rule.

Mr Morin-Strom: There was a 50 per cent rule that in no case can there be a contribution holiday or can you take something out of the surplus that would take away from the em-

ployees. If to this point all the contributions had been matching 50-50, the government could never have a claim to take any funds out. Am I correct on that?

Miss Clark: Up to this point we would not have any claim because we have a large unfunded liability. After the unfunded liability is paid for, after we had accumulated a surplus in the fund equal to 25 per cent of the valuation of the plan's liabilities, then we would have to do a calculation to attribute what the interest earnings on contributions made by plan members were, assign the assets to those contributions, plus interest, and then we would assume on the other side that that remaining amount of assets was attributed to government contributions.

The contributions plus interest earnings for each employee are calculated on an annual basis and those are distributed to employees on an annual basis in their personal benefits statements, so we do have that record.

Mr Morin-Strom: I guess what I am saying is, if you had never made any extra contributions, if it had been 50-50 all the way along, would I be right in saying that in fact 50 per cent of the total amount of the fund is attributable to employee contributions and the income that has been earned on them?

Miss Clark: No, because we have the benefits that we have paid out. Every year, when people make contributions, we have to take the benefits out. The flow into the fund is a net flow into the fund, so we would have to attribute where those benefits came from.

Mr Morin-Strom: I do not understand that.

Mr Brophy: May I say something also about the 50 per cent rule, which says that more than half cannot be paid by the employees? Think of a simple example. Let's say someone terminates and he is entitled to \$1,000 on value. He has contributed \$700 and the government has contributed \$700. What happens actually is this: Half of the value is \$500, so the employee would get \$200 back, because he cannot contribute more than half, but there is \$200 left that the government will leave in the fund. So although the employee has got his full \$700 out, he did not pay for more than half of the benefit. The government paid for \$500, which was half of the benefit. They have now got a \$1,200 benefit being paid out but there is \$200 left that was government money that is remaining in the fund and has not been paid out.

So it is not a simple split. It is not a defined contribution pension plan, it is a defined benefit

pension plan that the government is matching simply to try to fund it. If the employee contribution were fixed ad infinitum, the government contribution would have to go up and down, by definition. Through unfunded liability payments, for example, it would go up, and if you were overfunded, then you have to do something with it, but it is not a defined contribution plan that says that everything is exactly matched.

Mr Morin-Strom: I will try to put it a little more simply. I guess my concern is that if the funds are going in 50-50 all the way along and the benefits are being paid out, I would be concerned, if there are accounting transactions going on in the funds, as to how you are attributing payouts from the funds or income within the fund. Farther down the road, suddenly the employees now only really have 25 per cent of the fund and the government has got 75 per cent and a surplus shows up, somehow or other, in your accounting. It has gone away from what has gone into the plan, which is 50-50 all along, but somehow when you are accounting, the government now suddenly has a claim on more than 50 per cent of the fund. Is that possible?

Miss Clark: I would think that is probably not possible, since the public accounts have all the flows—contributions, interest payment flows and unfunded liability flows—clearly outlined. I do not think it would be possible to start shifting around attribution of where things were coming from. It is just that all the accounts are in the public realm.

Mr Morin-Strom: I guess I am just assuming that once the money goes in 50-50, if there are any earnings on the fund, they are attributed 50-50, and if there are any payouts to employees, presumably it is coming out equal shares out of the employees and the government, and I do not see how you could get away from the employees' share of the fund being the 50 per cent.

Miss Clark: Let me just say that what the PBA says is that the sponsor can take out only the surplus attributable to its contributions, so we would have to go back and find out what our contributions were and the interest on those. That is what we would have the ability to take out, not anything else connected with the fund.

Mr Morin-Strom: I thought, though, that the sponsor has to leave in at least matching to whatever the employees put in. If it stayed at 50-50, the sponsor could never take anything out under my scenario, because it stays 50-50. In my view, you could only take something out if the

government ever made an extraordinary payment on the basis of an unfunded liability or something like that. That would be the only basis to be able to take something back out.

Ms Hošek: The government has a history of having made payments for unfunded liabilities.

Mr Morin-Strom: Yes, I can see that maybe you could make an argument on that. Other than those, can you possibly get a claim on anything else, other than those kinds of extraordinary payments?

Mr Brophy: I can give you one scenario where both the government and the employees put \$500 into the pot. The individual terminates, nonvested, and takes his \$500 back out. The government has contributed \$500. What happens to that? The government overcontributed for that individual. As far as the fund is concerned, the government has now left \$500 extra in and the employee has taken \$500 out, so there is a mismatch immediately.

Mr Morin-Strom: That is a case where in fact, in fairness to the employee, he should be able to take that matching contribution, because obviously he is going to be short, going to another plan, to be able to buy that service.

Mr Brophy: You are talking different benefits; I am talking about reality. There is a potential of nonvesting, and it also is a defined benefit plan, so the matching is an average. What will happen is that some people will put \$500 in and get \$1,000 from the government in order to pay for their benefits because they are older. Some people are younger and it does not take quite as much. There is the constant mismatch on the defined benefit plan. What you are trying to do is, on average, make sure that the plan is funded.

Mr Morin-Strom: I think that is all.

Ms Hošek: I would just pass this information on to Mr Morin-Strom. There have been several special payments made to the public service superannuation fund. The present value as of 31 March 1988 of those special payments since 1976 is \$1,245,000,000 to the public sector fund, so we are talking about a great deal of money that has been put into the fund through special payments.

Mr Morin-Strom: That is about \$7 billion?

Ms Hošek: No, \$6 billion.

Mr Morin-Strom: So about one fifth of it.

The Vice-Chair: Any further questions?

Mr J. B. Nixon: I am holding myself back.

The Vice-Chair: Thank you very much, Mr Nixon, I certainly appreciate it. Thank you very much, Miss Clark, and your team. We appreciate the information. It will certainly be useful in our deliberations.

Is there any other business that anyone wishes to bring up? Seeing none, the committee is adjourned until 10 am.

Mr Morin-Strom: Excuse me, just one point: Would it be possible for us to have some officials from both ministries available for follow-up questions after the Ontario Public Service Employees Union presentation next week?

Ms Hošek: I do not see why they could not be here while OPSEU is presenting and after; no problem.

The Vice-Chair: So we will be hearing from OPSEU?

Mr J. B. Nixon: Given that OPSEU is seeking a maximum of three hours, let me suggest something that met with strenuous objection

from Mr Morin-Strom last time. I will try it again. Why can we not begin clause-by-clause review after OPSEU makes its presentation? I suggest we do that.

The Vice-Chair: If they are going to be here for three hours, I mean, if we are here—

Mr Morin-Strom: I do not believe we can make that decision at this point. We do not have three-party representation. The committee cannot make the decision at this point.

Mr J. B. Nixon: Maybe we should call the subcommittee. I will speak to Mr Pelissero when I get back.

The Vice-Chair: Then you call the subcommittee and the subcommittee can determine whether that should happen or not. Is that it? Thank you. We are adjourned until 10 am next Thursday.

The committee adjourned at 1553.

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No. G-3

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Public Service Pension Act, 1989

Second Session, 34th Parliament

Thursday 23 November 1989



Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 23 November 1989

The committee met at 1016 in room 228.

PUBLIC SERVICE PENSION ACT, 1989 (continued)

Consideration of Bill 36, An Act to revise the Public Service Superannuation Act.

The Chair: There is a quorum. Welcome to the Ontario Public Service Employees Union. Mr Clancy, would you please introduce the delegation you have brought with you. Our time constraints this morning—and I say this morning because we do have an opportunity to resume after routine proceedings this afternoon. I believe there might be a bell for a vote this morning some time between a quarter to and 12 o'clock. When we hear that, the committee automatically has to shut down. We can resume after routine proceedings this afternoon, which can range anywhere between 3 and 3:30. We will play it by ear, depending on the length of your presentation. We are in your hands. I would ask the viewing delegation to try to keep the cheering as limited as possible so that the committee members can hear. Mr Clancy.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

Mr Clancy: Joining me today are delegates from across the province representing plan members. So with me are people from Cornwall to Kenora, from Moosonee, I suppose, to Toronto, and they are here to witness our presentation to the committee this morning. As I say, they are representatives of members in their locals across the province.

I am pleased to appear before the committee today representing union members who contribute a large portion of their wages to public service pension plans.

Let me first introduce leaders of the other unions that endorse our presentation this morning, and I begin with George Mammolitti, president of Local 767 of the Canadian Union of Public Employees. To my immediate right is Michael Stokes, who is the vice-president of CUPE national and the president of the Ontario division of CUPE. John Murphy, at the far end here to my right, is vice-president of CUPE Local 1000 and he is also chairman of the CUPE Ontario pension committee.

To my left just behind me is John Sullivan, who is the president of Local 1587 of the Amalgamated Transit Union. John represents workers who work for GO Transit here in Ontario. John Miles, to my left, is president of the Ontario Liquor Board Employees' Union. To my immediate left is Andrew Todd, who is the chief negotiator for the Ontario Public Service Employees Union.

Members of the committee, I would appreciate your acknowledgement of the fact that many members of our unions have turned out today to show their concern about pensions. They are here to impress this committee that if significant amendments are not made to this legislation, there will continue to be strained relations between the government employer and our members over pensions. Pensions are a rank and file issue in 1989. This is an issue that will not go away just because you pass a law, especially the pension bill that this government proposes to pass.

Our submission to the committee summarizes the history of public service pension legislation in this province. We tell about the talks we have had with the province last year and about the many problems with this bill. With Bill 36, this government plans to change the way the pension plans operate. Some of these changes are for the worse, particularly for seasonal employees and for survivors. Disabled workers continue to lose out as do part-time workers. There are no pension increase or general benefit improvements proposed under this bill. Let me repeat. There are no pension benefit improvements or general benefit increases proposed under this bill, but the deduction from our paycheques will increase.

There is no guarantee that the government will ever negotiate improvements in pensions, but the extra deduction from our paycheques is guaranteed. What kind of bargain is that? It is no bargain at all.

This bill will not make life better for retired workers. The ones who are working will pay more for their pensions, which, I must say at the outset, are not Cadillac pensions. The average public service pension in the province for a person who has put in 30 years—30 years—on the job is only about \$17,500 a year. So if you are a correctional officer or you are a nurse who works

in a psychiatric hospital or a worker who works in a mental retardation facility and you have put in 30 years on the job, on average you stand to retire on \$17,500 a year. That is an average. There are many who collect much less than that, I point out to you, but that is the average.

Indeed, as is stated in our brief at page 14, some low-income earners might be better off without having to contribute to this plan at all. They would be better off living on the minimum benefits provided by guaranteed income supplement or guaranteed annual income system welfare. That is how bad this plan is for some of our members.

Another point that we want to drive home is that there is nothing in this bill to give us any confidence that our pension funds are in good hands. We are here to tell you that government paternalism will not wash any more. The times they are achanging. That paternalism just does not fly; it just does not wash any more. People are changing. Their attitudes are changing. The norms have changed. Surely the days of "father knows best" are gone.

As members of this committee well know, the past has not been kind to us in the pension plan. We have good reason not to trust the government employer to do the right thing with our pension funds. By passing this legislation, the government will signal to workers everywhere that it is not prepared to live up to its promises of pension reforms and pension progress. The government cannot continue to keep its head in the sand on the pensions.

As we state at the beginning of our brief, events of recent years have awakened workers to demand greater control over pension funds. Workers will no longer passively accept bland assurances that their deferred wages are being protected and properly managed. This awakening came about as a result of bitter experiences with employers like Conrad Black, who ripped off the pension fund of his employees.

We in the Ontario public service care about what happens to senior citizens. Many of our jobs entail caring about the less fortunate, caring for the mentally ill and the sick and protecting the public. Recently we have been pressing the government to come up with solutions on a number of fronts: in our overcrowded prisons, in our understaffed psychiatric hospitals, in our underfunded centres for handicapped people and the disabled. Today we are here to press the government employer into caring for the future of its own employees.

This government has passed legislation that protects pension funds from people like Conrad Black, but the question is, how can this government pass laws and claim to have any influence over private companies when it refuses to live by those same rules? Our pension relations with the government employer have been tarnished by paternalism. The record shows that our employer has not given pension plan members any control over their own funds. But the government has given perks to its favourites or to people it wants to get rid of.

The government ignored us when we warned that the way the inflation indexing fund was set up in 1975 would result in a large deficit. The statistics that have been presented to this committee by the government bear this out. Government experts have told you that by 1999, our pension indexing fund will be out of money. That may be. We have not had access to those figures to see if they are right. It is our fund; it is our money. Every week it comes off our paycheques, yet we have not had access to the figures to determine whether the government is right or wrong.

The government cannot say that it was not warned. We entered into this pension indexing only very reluctantly over 10 years ago and against the better judgement of most of our leaders. Sure, our members wanted their pensions to be guarded against inflation, but we wanted to make sure that the fund was set up right from the beginning. Studies show that much of this funding problem could have been avoided if our money had been invested at market rates. Instead, the government employer lent our money to itself at low interest.

David Peterson, when he was in opposition, said that the government of the day was raping our pension fund to bail it out of 10 years of budget deficits. Our pension money has supported what the taxpayers should have been paying for. At the same time, the government extended extra benefits out of that fund to high-income groups in the plan. High-income groups in the plan got special benefits, drawing from our moneys. The government incorporated new groups into the plan without the consent of the existing contributors.

You will find a detailed description of what we think is technically wrong with Bill 36 in chapter IV of our brief, titled "Bill 36 is Wrong on All Counts." So in chapter IV of the brief that is before you, the arguments have been laid out which outline, in our view, what is technically wrong with this bill.

What I would like to do now is let you know what must be done before any new pension legislation gets passed. It is the number one point that we make in our proposals for progress, which is the last chapter in the brief. On the video screen that is arranged here, we present the offending section of the Crown Employees Collective Bargaining Act, CECBA for short. This is the bargaining act which affects all the sister unions that are here with me this morning. The Crown Employees Collective Bargaining Act is the law under which we bargain.

Section 18 of that act specifically prohibits collective bargaining on all sorts of issues that are important to workers in this province in this day. CECBA is among the most restrictive legislation on the continent. It would fit right in, it would fit well in Mississippi or South Carolina or Alabama. It is that type of legislation: no right to strike, no right to bargain staffing or workload, no right to bargain pensions.

As we state on page 7 of our submission, the target of the union's long-standing campaign on pensions has been the right to negotiate with our employer. Repeatedly since 1972, unions have petitioned the government to change CECBA to allow for negotiable pensions. We want you to amend CECBA so that we can talk about pensions with our employer legally across the table. We come up against it in every round of benefits bargaining that we do. The government that makes the law hides behind the law every time it comes to bargaining.

What we would like to see, honourable members, is the word "superannuation" disappear. It is a simple change. It does not require massive amounts of language changes and so on. We just want the one word to disappear. Superannuation would fall away and then we would have the right, like thousands of other workers, to sit down with the government, when it comes time to negotiate our wages, our benefits and our working conditions, to negotiate around the issue of pensions.

1030

We have to have that word "superannuation" disappear if we are ever going to make progress. All the high-toned rhetoric from the Treasurer (Mr R. F. Nixon) about full consultation, joint trusteeship and sharing with employees makes no sense unless it is backed up by a commitment to bargain and by legislation to amend it. Bill 36 does not give us the right to negotiate contribution levels and benefits and share in decisions about investment and administration of our plan. The government can write its own rules of the

game, and the current rules say pensions do not have to be negotiated.

But aside from our membership, there are many other people who do not think the same way the government does. There is Edward C. Withames, a member of the Ontario Public Service Labour Relations Tribunal, who says it is time the government started to negotiate. He sees pensions as no different than wages and other employee benefits and he argues that they should be on the table. Then there are the government's own pension experts like David Slater, who called for a fresh start on negotiating public service pensions.

Mr Chairman, I submit to you that this bill is not a fresh start to negotiations. In its present form, Bill 36 is a step back. It is not progress by any stretch of the imagination. It does not fulfil the government's commitment and promise to us last year that it was prepared to enter into a new relationship based on trust. We explore that supposed new relationship more fully in chapter II of our brief.

Mr Nixon said to us that he wanted to negotiate when he called union leaders together a year ago last September. I sat there; I was in the room with these fellow trade union leaders, right across the table. He said he wanted to negotiate. We were sceptical. I do not mind admitting that to you for a moment. We were very sceptical, but we thought we could take him at his word. We were wrong.

His interpretation of what happened is a bit different than what I recall, but then I was there. I was there at every one of the 10 meetings that took place in October, November and December of last year with government officials. Mr Nixon was not. He came in at the end. When negotiations broke off on 12 December he was there, but not through the meetings. The key roadblock was the employer's refusal, that is, the government's, to submit to binding arbitration as a method of settling disputes. We have to have some way to settle the dispute in the event that a dispute arises. We have to have some mechanism to settle it if you are going to get away from this paternalism.

We have included the subsequent correspondence between Nixon and myself as an attachment to our brief. You will find it in our brief. When we did not agree with some of what Nixon was proposing, he returned to square one and told us how he intended to impose a settlement: more paternalism. That is what Bill 36 is about.

So the government starts off by saying it wants to negotiate. When there is a disagreement about

how we might propose, what does it revert to? The traditional, the paternalistic approach. The Treasurer comes in and says, "We'll just impose this on you." Now, when a few teachers rally in Hamilton, members of the committee will recall that Nixon then holds out another carrot, a union-run pension plan. "You take the money," he says, "and run it."

We like the idea of a union-run plan. Make no mistake about it. We like the idea of a union-run plan. But before we bite into that, we want some guarantees. We want the government to commit to some legal method of negotiating pensions with us. You have got to come back and answer that question. In 1989, you have got to answer that question.

It is negotiations that are needed. With negotiations, sure, we will run the pension plan, and I can tell you we will do a damn better job than the governments have done over the last 15 or 20 years with it.

Let me turn to some basic principles of pension reform that I think you will see coming up on the screen before you now. These are the principles we used. If you want to understand how we to measured this legislation, we started with these principles. Using these principles, we wanted to see how the government's proposed legislation stacked up in the modern age of pensions. These principles are outlined in chapter 3 of our submission to you, starting on page 10.

The first principle: All Canadians have a right to live out their retirement years in dignity. This requires an assured income that guarantees economic independence at least at a level of frugal comfort.

The second principle that we used: Pension plans must be adaptable to the needs of all workers in the plan and reflect the principle that uniformity or equal treatment is not necessarily equitable.

Modern-day pensions, principle number three: The employer is not the owner of the fund and is not entitled to use the fund's assets or surplus as a slush fund or an excuse to take a contribution holiday.

The fourth principle: Plan members and beneficiaries have a right to know their pension entitlement and the state of their pension fund.

The fifth principle: Workplace pension plans are compulsory savings plans. Those who must contribute their earnings have the right to negotiate contribution rates and benefit levels, the principles governing the fund, and exercise control over the management of these funds.

Sixth, pension legislation must provide a mechanism to resolve differences.

The seventh principle: Contributors must have the right to establish the principles that govern their pension savings, to determine if and how money is invested and to ensure the investments are made in enterprises that reflect their ethical values.

The eighth principle: The plan must be managed at arm's length from the sponsors.

1040

I do not want to belabour the point by dwelling on these principles, but I think they are self-evident in 1989. Just talking to some of your acquaintances about Conrad Black and just some of the issues of the day in the last five years of pensions, I think you will appreciate that these are self-evident in 1989. Our membership in these five or six unions here understand this now. They have a much better understanding of this and of these principles. These are principles that people embrace in 1989.

I do want to bring to the attention of the committee at this point a particular shortcoming of Bill 36. It has to do with dignity, which was the first principle of pension reform. The government says things will be better under Bill 36. Let's look at a case in point.

Take Richard Darrough, one of our members. He would have liked to have been here today to tell you his story in person. He is a timber scaler near Algonquin Park. That is what he is doing as we speak here this morning, because he is a seasonal worker, Richard Darrough. This is the only work he can get, seasonal work.

He started working with the public service more than 30 years ago, way back in 1955, when he was making about \$6 a day. Because of the rules, he was not allowed to join the pension plan until just a couple of years ago.

That is something we have been calling for for years, getting some extra retirement income for seasonal employees. Now he is close to retirement age and he has become very worried about his future. He wanted a pension fund that would keep him above the poverty line. A public service pension of \$17,500 a year is just above the poverty line for him and his family, but he had to pay dearly for it. He paid \$27,000 to buy back those pension years, for the service credits for those years that he was not paying into the plan.

That is why most seasonal workers, who are unclassified, employed by the Ontario government do not buy into this plan. It costs a lot of money. There are about 20,000 of them—20,000 workers employed by this government who will

not get a public service pension because it is too expensive to buy in. They just cannot save that kind of money.

Dick Darrough did. He saved his money for years in registered retirement savings plans. Under the current pension rules, Darrough was able to buy back 30 years of pension contributions based on his historical salary, the wages he made at the time. He paid on the salary he earned those years he should have been contributing to the plan when the government would not let him in.

Here is where Bill 36 really falls down. Under this bill, Dick Darrough and thousands of seasonals like him will have to buy in at current salary for those years. They simply cannot do it. We estimate that in Darrough's case that would have cost \$43,800. That is 50 per cent higher than he paid under the present rules, under the present legislation. They cannot afford to do that. So when the cabinet says this Bill 36 will improve pensions, you really should take those comments with a grain of salt.

There is more, though. The government gives these seasonals five years to raise the money to buy in. If they cannot save up enough in five years, the government advises them to approach "a lending institution." If you do not believe me, it is in their briefing book on this new Bill 36. They say, "Go to a bank." I think that pretty well sums up the government's attitude towards pensions for seasonal workers and unclassified employees.

There are about 20,000 who are employed by the government. How many banks are going to lend seasonal workers or unclassified employees the kind of money it is going to take to buy into this pension plan? I just cannot think of any lending institution that would do that, lend somebody that kind of money, given the fact that his employment is irregular and of limited duration.

Let us turn to another aspect of this pension bill and where it is going. We do not think that this government has a handle on how many people are going to be in the plan in years to come. As it stands right now, we have to accept their guesstimates on where we are headed since they will not negotiate with us. Talk about flying blind, a pig in a poke. We cannot even get at these issues.

The government can only guess as to the size of the workforce in 1995 or 2021, sad it can only guess as to the ratio of contributors, people paying into the plan, as opposed to pensioners, people drawing out of the plan.

I want to be fair. We cannot blame the government entirely. In today's turbulent society and deteriorating environment—poor air quality, polluted water, etc.—there are probably very few factors that are subject to anyone's absolute control. We do note that the government says the ratio will be about two to one by 1995, but we do not know if it is taking into account the effects of the government's continued drive to privatize public service jobs. As they plot this through to 1995, we cannot learn from them whether they have taken into account that on the other hand they are privatizing public service work. The number of contributors is being eroded from the bottom, from the base, with those jobs being contracted out.

Privatization is something this government does not like to talk about. You ask them and people do not want to talk about it, but they are doing it. You name a ministry and we are working there, we are following it and we know the government is doing it, although not in that flamboyant style of a Vander Zalm or a Devine out in Saskatchewan of privatizing public service work. They are not laying off thousands of civil servants at a time, but here in Ontario, as we speak, as we sit here right now, in this government, somebody is signing a piece of paper which means there are a couple of jobs gone here, a couple over there, three over there, and is turning that work over to private contractors. The results are the same: thousands of public service jobs contracted out.

If that trend continues, what it means is that there will be fewer contributors to public service pension funds than the government says. We are worried about that because we are paying for it off our paycheques. It comes off the paycheque. You cannot have a say about it. Every two weeks when those paycheques come down, it is right there, it is a deduction, it is off the paycheque.

This privatization is something that has to be factored in, and it is going to have a particularly hard impact on low-income earners: women, visible minorities, men and women who work in cleaning and dietary areas now being contracted out. And the government continues its program, divesting itself of its responsibilities in health and social services, giving them over to transfer payment agencies. In the Ministry of Community and Social Services alone, hundreds of workers, mostly women, will be shifted out of the public service in the next five years.

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Again, on the other hand, policy decisions have been made. The government plans to

downsize, to close its facilities for the developmentally handicapped, shift them into the community to group homes and sheltered workshops that pay low wages and in many cases do not have pension plans. While that is happening on the one hand, the result of that on the other is that those who are left in the public service will be forced to pay more for pensions, and as I said earlier on, they pay every two weeks right off the paycheque.

On the paycheques there are all sorts of deductions. Let us have a brief look at them, if we can, here on the screen.

Bill 36 itself proposes to deduct from our paycheques one per cent, but combined with the existing seven per cent and all the other deductions we have, there is not really that much left, and our members are watching that nine per cent federal sales tax coming up just on the crest of the horizon. It is no wonder our members are reluctant to settle for wage offers that are barely above the inflation rate, and it is going to get worse.

There is a militancy. Don't shoot the messenger, but I want to say to you that, as a trade union leader, I can feel it. People are getting angry. People are frustrated. Look at the cheques. Watch the deductions. This bill is going to up the ante in public service bargaining, and in each one of these unions represented here this bill is going to up the ante in bargaining, because our members interpret it as a wage cut. You see, they are not getting anything more with this bill—indeed, many of them are getting less with this bill—and yet you are taking more money for it, so they see this as a wage cut. They also recognize that we did not negotiate it. We were not allowed to, so that makes it that much worse.

That leads me to another and an even more basic inequity about this pension plan, one that Bill 36 does not do anything about either. That is the fact that low- and middle-income earners in this plan pay more for their pension dollar than do the high-income people in the plan, recognizing that there are hundreds and thousands of people who are in this plan who we, as unionists here, have nothing to do with and they are drawing off that pension plan.

In the brief it is outlined for you and I will not go into the technical arguments, but I say this to you: Low- and middle-income earners in that plan pay more for what they ultimately derive from the pension plan than do the high-income people. It is a complicated issue. Actuaries understand it. Let us take a look at it briefly.

It has to do with the way this plan is integrated with the Canada pension plan. We explore that on pages 17 and 18 of our brief. Expressed simply, it means that the low-income earner will contribute \$5.42 for every dollar of public service pension payable at age 65. The high-income earner contributes only \$4.72. One of the technical advisers here with me today, Don Lee, will make a very brief presentation on this point later and may answer any questions that you might have on this particular point that I am raising with you in my presentation.

The last of the pitfalls of Bill 36 that I would like to talk to you about is early retirement. All of our members in this plan have what is known as a 90 factor. It is among the worst in the public sector pension plans across Canada.

Let me say this to you: When the Premier of the day, regardless of who it is, talks about a world-class community and cities and we are on the cutting edge, on the leading edge and so on, our membership takes a certain amount of pride knowing that every day the province does not run unless our members are working. It just simply does not run unless our members go out and work day in and day out.

I can take you into jails in Ontario that have not closed their doors since 1830. They opened in 1830 and every day since 1830 those jails have opened. We have had people who have staffed it. And I can take you to hospitals and group homes and so on, 365 days a year.

So we take pride—world class, set trends, cutting edge, leading and so on—but on the pensions we bring up the rear. Newfoundland has a 25 and out. Every other province is either ahead of us or equal to us. It is simply inequitable to require that all workers wait until they are 60 and have spent 20 years on the job or that their ageing years add up to the 90 factor before they can claim retirement benefits without a penalty.

We are out of step. I have been imploring and pleading with the government. We do not want to fight, to set out every morning to have a fight, no. But we have been trying to get across to the government that people and values have changed. People are saying to themselves that they do not want to work until 65 and then die of a stress-related illness a couple of years later, three years later, five years later.

The values have changed, the way people are with family. People want to spend more leisure time, family time. There is a recognition that family is an important component in our lives.

So when you have this 90 factor in here we are out of step. We are out of step with many other

jurisdictions, but more important, the government is out of step with where its members are at. These are the people who are delivering for it every day of the year, every year of the century.

This 90 factor discriminates particularly against those in high-stress occupations. Some of these people rarely reach retirement age. If you work in a correctional centre, if you work in a psychiatric hospital, you know the fight or flight when you are presented with a crisis; firemen maybe five, six times a month. If you work in a correctional centre, 10, 20 times a day, all of a sudden, there is a crisis and your blood pressure goes to 200. Your blood pressure just shoots right up because there is a crisis and you have to be there, 10 and 20 times a day in psychiatric hospitals and so on, workers in facilities, conservation officers.

People need, in this day and age, the flexibility of early retirement. My union brother Michael Oliver will talk to you briefly about that later. He will talk to you about what it is like to work as a correctional officer, to be under the threat—it is not in the job description, it is never in the job description—of assault and injury every day when you go to work. The statistics are there. The Ministry of Labour has them.

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Any legislation governing public service pensions must provide better early retirement options. Even the federal tax department thinks so, as we note on page 10 of our brief.

At the same time, pension plans must prevent certain high-income groups from claiming excess privileges. That is why we want a separate plan for union people. The managers, the people who are the high-income earners, who pay less and get more, we do not personally dislike them, but we do not want them in our pension plan. They are getting more and contributing less. We want a pension plan that is just for our people who tend to be middle- or low-income earners.

There is one last point that I would like to make before I turn to our position on what we think should be done. I want to talk about what is known as surplus stripping.

The third of the principles that we use to measure this proposed bill states that the employer is not the sole owner of the fund. There is no justification for using the funds as a slush fund, as somewhere you can access cash and use it for other purposes. That principle has been reinforced by the courts in the Dominion Stores case, which you will recall, of just a few years ago.

Look at the wording of the Ontario Hydro case on page 11 of our brief where the Court of Appeal for Ontario said, "The [pension] fund, which includes any return on investments, is to be maintained for the benefit of the members of the plan, and there is no provision in the plan which can serve to support the contention that any surplus that may from time to time accrue in the fund is available to the corporation to meet its contribution obligations."

The surplus is not available to the employer. Again, we are back to this double standard and what I described to you is paternalism. Because in Bill 36, in this proposed legislation the government has brought forward, that is exactly what it allows the government to do. Instead of using any surpluses to improve the benefits for the members, for retirees, they will be used to reduce the unfunded liability.

I remind you that the unfunded liability was caused by the errors that were made when the plan was set up, on which we had no say. We pointed out to the government that there were problems—we did not have any say—and here it is, the government repeating the same mistake again.

It is our contention that inflation indexing protection for people who retired before 1976 is solely the responsibility of the government, not of the existing contributors, not of any of the existing plan members.

In light of what the court said in the Hydro case, what the government is proposing would probably not be legal. Because the assets have accumulated on the basis of matching contributions, it is not clear whether a surplus can legally be transferred to meet obligations provided for by the indexing fund or, as in the case of our pre-1976 retirees, are now being met out of the consolidated revenue fund.

Bill 36 will override provisions of the Pension Benefits Act when it comes to surplus stripping. Again, we have another piece of legislation which is designed for all the people in all this fair land, except that your bill overrides this legislation over here, the Pension Benefits Act. It is a special piece of legislation, specifically designed to override this act and confer a lesser benefit on our members. Your Bill 36 overrides provisions of the Pension Benefits Act when it comes to surplus stripping, and this must make those employers in the private sector extremely jealous. They do not have the ability to change the rules when the courts say they are wrong.

Chapter V of our brief, page 28, summarizes how this bill places the government almost above

the law on pensions. Can an employer exclusively determine the terms and conditions of the management of our pension savings? It amounts to a violation of rights that would never be tolerated if it concerned the property of a large corporation. In our case, this is the property of thousands of public service workers. It is our pension. Surely in 1989 this is a self-evident truth. It is our pension and it is our future.

I would like to turn now to our position on what should be done by this government. We summarize this in chapter VI, page 31 of our brief. We say, first of all, amend CECBA. As I said at the outset, this is a prerequisite for negotiations. We propose that this committee make an all-party recommendation to remove from CECBA the prohibition of negotiable pensions.

It is not difficult to do. The amending legislation was already before this House last session: Bill 216, a private members' bill sponsored by the member for Windsor-Riverside (Mr D. S. Cooke). This principle of collective bargaining of public service pensions was endorsed as far back as 1980 by a royal commission on pensions.

A select committee of this Legislature adopted the principle in 1982. We ask you to adopt it again with a strong recommendation for an amendment to CECBA. Get pensions on the table.

I would like to refer you for a moment to the major shortcomings of Bill 36 pertaining to negotiable pensions as listed on page 23 of our brief.

Bill 36 omits any reference to unions; it does not recognize the right of the bargaining agent to act on behalf of plan members.

Plan members are given no information-gathering or decision-making role that could prepare them for negotiations.

The government alone sets up the plan, selects the board and its terms and chair, decides on the level of unfunded liabilities and valuation of the plan.

That is our second major proposal. We need to know all the facts about the fund. We want the funds placed on a sound financial footing. We want to make sure we do not lose any of our members' money when the plans are amalgamated.

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Our pension experts, and independent experts too, as you will hear later on, who have reviewed this bill, do not think that government actuaries are correct on issues concerning the valuation of

the fund, transfer of assets and other issues. Actuaries are concerned about the way Bill 36 sets up this plan. They think it will get actuaries into trouble when it comes to fulfilling their professional obligations. But as union members, what are we most concerned about? We want to make sure that there will be funds to improve some of the benefits we have talked about here. We need to get more money to the widows and widowers and families of our members who die early.

If you read page 16 of our brief, Bill 36 will not improve benefits for survivors. The formula will change. In fact, it may reduce benefits by a few per cent. We need early retirement provisions so that people can get out before they die on the job. We want to make sure this pension fund gives us the ability to negotiate improvements in benefits. The bill must be amended to ensure that the plan administrators have accurate information about plan members past, present and future. That means the government must lay bare its plans for the public service, privatization and so on.

Then we would know where we stand. We have had a tough time getting information, the information that we need to correctly assess these pension funds. Again, we are paying the money in; we cannot get the information. How do I answer my membership? How do we, as leadership, answer our membership? We cannot get access to the information. We are told that the amortization for the next 40 years will make it impossible to improve benefits for this period. First of all, I need the information. Our members do not want to be locked in for 40 years in status quo.

Our third point in establishing our position is that our proposal is for this committee to offer an amendment to Bill 36 to guarantee equal representation for government employees on a neutral pension board. We want a neutral pension board. We want representatives of the plan members, equal representation for our employees. Bill 36 says plan members may be permitted some representation if the cabinet considers it "appropriate and desirable." If the government considers it "appropriate and desirable," plan members may be permitted some representation.

OPSEU is one member on the current board; Bill 36 offers no guarantee that we will even keep that one. This is not progressive, this is not a step forward in this legislation. This legislation, to every one of the workers we represent, is a step backward. Our proposal is for the board to be at arm's length from the government so that the funds cannot be used as a slush fund. The pension

board would not be chaired by someone appointed by the government as proposed in Bill 36. The chair would be negotiated between the parties. The parties would sit down, as we do in other situations, and we would negotiate who the chair would be.

Our fourth point is to ensure true negotiable pensions. There must be binding arbitration to settle disputes. There has to be binding arbitration to settle disputes, otherwise we are powerless to force the employer to do anything. We do not have the right to strike. We have to have binding arbitration to settle disputes if they arise.

Do you ever wonder why the government employer is so scared of binding arbitration? As I understand this, they have told you that they cannot go along with binding arbitration because there is too much money involved here. They said, "Binding arbitration, yes, that works in a number of situations, but, oh, not in this one." Why? "Oh, there's too much money involved here." That is a pretty weak argument. They also say, "Oh, arbitrators don't understand pensions." Those are pretty weak arguments, but clearly that is not the whole story, is it? At a dozen negotiating tables every year we sit across from government negotiators with millions of dollars at stake and they are certainly not reluctant to send those issues to arbitration. Why not pensions?

There is one important reason why the government employer refuses to submit to arbitration. All of our actuaries, all of our technical people, agree on this point: The government wants to make the contributors and beneficiaries of this plan pay for the mistakes the government made in the past. We did not have any say in it and had no meaningful way to contribute to any of the decisions made in the plan, and now the government wants us to pay for the past mistakes.

The government has made a lot of public statements about cleaning up the pension mess, but where is the money going to come from? Under Bill 36, we will be paying for it and we think the government is afraid that an independent arbitrator will not see it its way. Hence, they do not want to talk about binding arbitration as a way to settle disputes.

This bill gives a lot of power to the Treasurer (Mr R. F. Nixon). The Treasurer and his successors will make all the key decisions around assumptions that predict the level of surplus or deficit. He makes the investment decisions, just like his predecessors. I will not belabour the potential for conflict of interest or the temptation

to use these funds to reduce tax loads or to take a contribution holiday to balance the books. We have outlined our views on that on pages 26 and 27 of our brief.

As members of the Legislature, I am confident you can figure the political angles of this proposed legislation. If Mr Nixon makes a mistake, we are the ones who will pay, just as we are paying now and will pay for the rest of our working lives for mistakes that were made 15 years ago. There will be no redress for union members to get our money back. Bill 36 offers us no recourse to the courts.

I would like to mention just a final few words about the so-called option of a union-run pension plan. Mr Nixon is talking about an option of a union-run pension plan. I recall at the Hamilton rally with the teachers and so on the Treasurer standing up and saying, "Well, if you want it, you take it and you run it."

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We support that principle, a pension fund administered by a union pension board accountable to plan members. We support that in principle. We want to see union money separated out of the funds to pave the way for such a possibility, but before we get to that step a few years down the road, a few things have to be done by this Legislature.

A first step is an indication by this government that there can be joint trusteeship, with the assurance that disputes would be settled fairly. This has to be done by this Legislature in order to get to that point the Treasurer said he was offering, a union-run plan. The first step in getting to that point is there has to be joint trusteeship now, with the assurance that disputes would be settled fairly.

We need that amendment that we talked about earlier to the Crown Employees Collective Bargaining Act to allow us to negotiate pensions. Then we can be legally assured that the government will contribute its share to the fund. Given the history, it must be legally bound to do so. The government employer will have to take full responsibility for paying off the unfunded liability without stripping off the current surplus.

I will close by stating that the Ontario Public Service Employees Union and the other unions represented here want to see a new era of pension reform for the public sector workers we represent. Now, aided by strong recommendations from your committee, the Ontario government must take these essential first steps that I have outlined this morning.

Mr Chairman and members of the committee, thank you for your time. I am prepared to answer questions you may have. I would like the opportunity for one of our technical experts to speak on an issue that I talked about in my presentation, as well as a member, Michael Oliver, who wants to tell you what it is like to work in one of the high-stress occupations in which our members work. But with the indulgence of the chair, we might perhaps take a two- to three-minute break.

The Chair: I suggest we continue, because we may be leaving some time between 11:45 and 11:47 and coming back after routine proceedings. You mentioned Mr Lee or Mr Oliver. If they are prepared, we are prepared to hear them at this time.

Mr McLean: On a point of order, I am just curious to know how long it will take for the other two presentations. I have to speak in the Legislature shortly on the bill that is before it now, and I would like to know if they will finish this morning or if we will be back at 3:30.

The Chair: Well, maybe Mr Clancy could answer how long Mr Oliver and Mr Lee will be in their presentations.

Mr Clancy: The way we suggest we proceed is that we have two members who have brief presentations of a matter of minutes. Then we would come back this afternoon with our technical people to answer questions.

The Chair: Mr Lee and Mr Oliver then.

Mr Clancy: No, it is Mr Oliver and Ms Phillips. All right, why don't I call on Mr Oliver then.

Mr J. B. Nixon: I am just trying to understand. There will be a continuing presentation this afternoon.

The Chair: This afternoon after routine proceedings, unless we finish up this morning, and I am not hearing that we are going to be able to. Why don't we proceed and see where we go from there.

Mr Clancy: Okay.

The Chair: Who is going to be speaking next?

Mr Clancy: I will call upon, first of all, Mr Oliver.

Mr Oliver: Ladies and gentlemen of the committee, brothers and sisters, fellow unionists, my name is Mike Oliver and I am a correctional officer in the Cornwall Jail. I am proud and pleased to represent my fellow correctional officers and my union today to perhaps give you a better understanding of what a

correctional officer is and of why the dispute we had with the government went on.

I am a little intimidated today because I get a feeling that I have a couple of minutes to help you understand what it feels like, as an individual, to realize that I probably will not see a pension if there are not some major reforms.

I think we have to look at our correctional problem, the problem of the Ministry of Community and Social Services and the problem of psychiatric hospitals as cause, effect and solution. I see the cause as a segment of society that cannot deal with our normal standards. Their ideals and morals are completely alien to ours and so they have to be institutionalized. These are people who follow two rules and two rules only. It is hard, if you are not a correctional officer, to understand these rules. The rules are intimidation and manipulation. It is that simple.

So you have this segment of society that has no moral standards basically. You have them in one building in each town or each area, and then you take some normal guys off the street, husbands and fathers, and you stick them into that building with the inmates to guard them 24 hours a day. What happens, of course, is that the head games start, the manipulation.

I cannot tell you everything that happens because of the time period today. I will let you understand, though, that there is a difference between all inmates. There are slip inmates and there are slide inmates. A slip inmate is somebody who has committed a crime and got caught. He screwed up and they put him in jail. He goes back out, he understands what he did wrong and he does not come back again. He slipped. The slide guys are the manipulators, the intimidators. They are in and out, in and out, in and out. They go out, they get caught, they come back in.

A correctional officer faces daily the chance of assault; not just verbal assault or being pushed, but the chance of serious assault. For a typical inmate, it is not just assaulting you; he has to degrade you. Instead of throwing a glass of water at you, he urinates in the glass first and throws it at you. Until recently in Cornwall, we were using buckets in the cells. Every morning when we emptied their cells so we could empty their buckets, we took a chance that we were going to wear a bucket with whatever had been put in there in the night.

As Brother Clancy said, which was my line, but I think he used it quite well, for a fireman, when that alarm goes off, his heartbeat goes boom, boom, boom, boom, boom. That is

something that has been studied medically. A correctional officer faces the same thing. Our alarm goes off far too many times, though. In a week it might go off 10 or 15 times. Our pulses and our heart rates go up. You feel like you are going to have a heart attack. That is the problem.

The problem is that you are dealing with a group of individuals who are sitting there all day with nothing else to do than play head games with each other and to think of ways to make your day worse. The conditions that we are working under right now in the correctional centres are unacceptable.

What effect does this have on our correctional officers? I am representing one institution here, but I can tell you that what you are going to hear is something that is happening in every institution. We are not living to see our pension. It is just impossible: the stress level, just being assaulted, just being threatened, just having your wife threatened when you are at work.

They drive by and they see my car in the parking lot. We are in a small town. They call my wife. I do not know how they always get the number. "I know Mike's at work. I'll be over to visit you in a few minutes." She understands it is a game, but it is something that causes major marital problems. It is something that causes stress in your marriage and with your children.

There is so much to it. Like I said, we cannot get into it all today, but what happens is that in Cornwall we are not living to see our pensions. That is a fact. In the last two or three years that I have been there—I have only been a correctional officer for three years—one of our people, Gerry, who was 60 years old and who was as high as he was going to get—we do not normally stay around that long—had heart problems, a triple bypass. He is gone.

1130

Enos Rupert was 59 years old. He was talking about having his pension, "I'm going to see a pension at 65." Three months later, Enos is dead with cancer of the lungs, sitting there with 90 inmates smoking around him continually, and maybe the stress. Who knows? Cancer is cancer.

We have a 40-year-old working with us who had his testicle crushed so badly by an inmate that he had to have it removed. We had another 40-year-old, healthy, big, strong, triple bypass. He is gone. We have a 37-year-old, a married man, family, commitments. He didn't show up for work one day. Nobody knew where he was. He was in the psychiatric ward at Cornwall General Hospital.

Lumberjacks walk around showing you their hands, the callouses. This is what being a lumberjack is about. That is part of the job. Our callouses are in our stomachs. They are called ulcers. That is what being a correctional officer is all about. It is heart attacks, it is stress, it is early death and it is worrying about who is going to take care of the family.

There are more people with serious illnesses in Cornwall, but a lot of guys play the macho thing. I do not understand and I do not know what their illnesses are. There is only 16 full-time staff and I have just talked about six who are long-term with us. Nobody has retired in Cornwall in the last number of years. The only ones who retire are supervisors who do not have direct inmate contact. It is stress, pure and simple stress.

We are talking about a one per cent increase in our pension plan. It is already too high: one per cent more. I have two children. I have commitments. Dave has his hand in one pocket. Brian has it in the other pocket. They are in so deep they are pulling my socks up. It is a problem. How much more is there? There is no more.

We are laughing at Newfie jokes all the time. As you just saw on the screen, the Newfoundlanders are out in 25 years. They are sitting around down there saying, "Have you heard the one about the Ontario guys' pension plans?" That is a big joke, because we never live to see a pension plan.

What is a solution? Very simply, here is a solution. The government has to work with the leadership of my union for working conditions that are short-term, correcting what is happening. We have to have somebody come in and look at our institutions because I am worried about a pension, but I am never going to see a pension because the working conditions and the stress are so bad. Let us get our priorities: first, working conditions.

Second, we have to have the dignity of a pension. I think everybody understands that. We have to have the assurance that provisions will be made to ensure that we will live to see our pension. To me, that means 25 years and out as a correctional officer. I am not speaking for everybody. I am speaking for myself: 25 years and out.

Any one of you ladies and gentlemen who wants to step inside a Toronto jail—the other day another correctional officer had a pen jammed through his hand. The inmates are constantly walking around with pencils, pens, knives, whatever they want, and any little thing—cold toast, cold eggs—and you are wearing that pen,

because what do they have to lose? They are habitual. They do not care.

We cannot stick them all on Baffin Island like everybody wants to do. We are a progressive country, so they have to stay in institutions and they have rights. Good, but make God-damned sure that we have rights too and that the government, who are just normal women and men like we are, understands what we are faced with here.

I would like to conclude, ladies and gentlemen of the committee and brothers and sisters, by saying you have seen our logo and our button. It says, "Our pension, our future." As correctional officers, please understand that with our current pension, we have no future and that is not God-damned good enough.

Mr Clancy: The next speaker is Rose Phillips, who works at the Brockville Psychiatric Hospital. She is one of the 20,000 part-time workers whom I talked about earlier. Rose is going to speak to you for a few moments.

Ms Phillips: Good morning. Welcome, brothers and sisters. I am glad you took time out from the Ontario Federation of Labour convention to come down and cheer us on. My name is Rose Phillips and I work as a dietary assistant at the Brockville Psychiatric Hospital.

I have been a member of the public service pension plan for only the past three years, but it has taken me two years to put \$979 into that pension. I pay \$15.02 into the public service superannuation fund every two weeks plus \$3.05 to the adjustment fund. If I were to retire now, at this rate, I would receive \$2,800 a year pension. Could you live on \$2,800 a year? As a part-timer I would rather put my money into an registered retirement savings plan, so that when I am due to retire in another 20 years, I would have something to live on.

I am classified regular part-time. Under the rules of the pension plan, I can only contribute to the plan based on my base hours, and those are my regularly scheduled hours. I am scheduled to work 14 hours a week, but I work far more than 14 hours a week. So far this year, I have worked an extra 472 hours, and I am averaging anywhere from 30 to 45 hours a week. So what I have lost is equivalent to 12 extra full-time weeks or 33 weeks of 14 hours, which I have lost in my pension plan because you will not allow me to pay on my extra hours worked. I could use that money when I retire.

I want to contribute more than that because I want a decent pension when I retire. I want to contribute on what I earn. Change CECBA to

allow me and all my fellow brothers and sisters who work part-time to do that. Bill 36 will not let part-time workers like me make contributions based on the hours we actually work. We do not mind paying on it, because we know we are going to get it back in a decent pension. I do not think you should wrongfully take that one per cent from us when you will not even rightfully take what we deserve to pay on what we earn.

Please consider the changes to CECBA and listen to what we are saying. We earn it, we deserve it. It is our pension and it is our future. Thank you for listening to me.

Mr Clancy: Mr Chairman, we have a submission that we want to read into the record, which would probably take 20 minutes. In addition, our technical experts will present a report to you on the actuarial issues that need to be addressed and that will take 40 to 50 minutes. I am in your hands as to how you want to proceed.

The Chair: I have been informed by the clerk that, barring any unforeseen circumstances, there will be a vote, so there will be a bell anywhere from 11:50 to 12 o'clock. I have not had anybody on my list for asking questions, so if it meets with your approval, we will adjourn the committee now and reconvene after routine proceedings, which can take place anywhere from three to 3:30 to 3:45 at the latest, and pick it up at that time. If I do not see any violent objections from the committee members or the presenter, I will do that.

Mr Clancy: No violent objections, just a question. What time?

The Chair: It depends on the length of question period. Given today, we may start question period at 1:30 or 1:45, if there are not any minister's statements. We could be back here by three o'clock or we could be back here by 3:30 or we could be back here by four o'clock. It is flexible, so anywhere between three and four.

Mr Clancy: I just want to understand. What time do you want me back here? At three o'clock?

The Chair: Let's say 3:15, and we will apologize if we are later than that.

Mr Clancy: That is understood. All right. At 3:15 we will return.

The Chair: We cannot physically sit until after routine proceedings, so if you are here for 3:15, that would probably be best.

Mr Clancy: We will be here.

The committee recessed at 1140.

AFTERNOON SITTING

The committee resumed at 1516 in room 228.
PUBLIC SERVICE PENSION ACT, 1989
(continued)

Consideration of Bill 36, An Act to revise the Public Service Superannuation Act.

The Chair: I am going to recognize a quorum. We are yours for approximately an hour to an hour and a half.

Mr Todd: Thank you. My name is Andy Todd. I am the chief negotiator for the Ontario Public Service Employees Union and I have been involved in the negotiations and discussions around pensions with the Ontario government last year in some detail and certainly over the years we have discussed it since 1973.

This morning we tried to make clear in layman's terms—that means in terms that I can understand—what pensions are all about. This is a difficult and complex subject. At the same time, we want the committee to be aware that we have done our homework on the statistical and other financial underpinnings of the arguments that we were making in a general way this morning, so this afternoon we have Don Lee, from Union Pension Services Ltd, who is our expert and consultant in these matters. He has some material that he wants to present, so I am going to turn to him now for that presentation.

Mr Lee: Thank you, Andy. I believe you have before you a report prepared by Union Pension Services as part of OPSEU's submission.

The Chair: What does the front of it look like?

Mr Lee: It is dated 2 November 1989.

This report concerns a number of actuarial issues that need to be addressed in any examination of the public service pension fund, either in its existing or in its proposed forms. In my remarks this afternoon, I will try to review some of the main points of that report, but I will also report to you the opinions and analyses of two members of the actuarial profession who have been engaged by OPSEU for the purposes of this review, Peter Hirst of Actrex Partners and Crawford Laing, from the firm of that name.

I will begin with the report that you have before you and review, as I indicated, the main points of that report.

The first section is concerned with the differences that exist between the government and OPSEU with respect to the basic economic assumptions that go into projecting the amount of

benefits, the amount of contributions and the amount of interest that might be earned in future years of the operation of the plan.

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I will not review the particular details of those differences, except to say, as the report does in conclusion, that OPSEU's own view of the appropriate economic assumptions for the purposes of evaluating the public service plan are overall, when taken together, slightly more conservative than the government's own set of economic assumptions. In particular, that is because of the differences that the government and OPSEU have with respect to its expectations about future levels of wage growths and its expectations about the impact of promotion and merit up the salary scale.

Following that section and beginning on page 5, there is a discussion of what we call the demographic assumptions: how many people are coming into the plan, at what ages, what sexes, what marital status, how long are they living, how often are they becoming disabled or terminated, how soon are they taking early retirement; all of those kinds of factors which we together characterize as demographic.

For the purposes of our analysis, we have simply used the same assumptions as are employed by the government's own actuarial services branch. That is not because we are entirely happy with that. We have reason to believe that the experience of the average unionized member of this pension plan may in important respects be somewhat different than the experience of the plan members as a whole, and in particular of the plan members who have high salaries and steep paths up the salary scale.

I believe Mr Clancy mentioned this morning in his presentation a concern about equity within the structure of the plan, equity and the structure of benefits and contributions. This is one aspect that concerns us very much in relation to the demographic assumptions, because the way in which some people can get more out of the plan than others is precisely by moving rapidly up the salary scale and retiring relatively earlier than everybody else, and, of course, living relatively longer than everybody else.

We have done analyses to try to determine the scope there is for different benefits flowing out of the public service pension plan to different members of the plan and we have found that a

senior person at the management level, who might currently be earning anywhere between \$60,000 and \$72,000 a year, will probably derive more than twice the value of benefits out of the pension plan—per dollar of contribution, we are talking about—than the typical OPSEU member. People who have higher salaries and retire earlier and live longer really capitalize on this plan, not the people at the lower end of the salary scale.

These general suspicions are confirmed by the superficial analysis of experience that we have been able to do. We have been able to observe significant differences in the rates of early retirement as between members of OPSEU and other members of the pension plan. We see significant differences as well in the rates of termination among those same groups of men at younger ages. Perhaps most startling are the differences that we were able to observe with respect to the rates of mortality among OPSEU's male membership in comparison with the rest of the male members of the plan.

Interestingly enough, there were no significant differences between the experience on demographic factors of OPSEU women members of the plan as opposed to all members of the plan. That is largely because there are very few women in the public service outside the unionized sector.

We do not feel that the data which we have presently available are sufficient for making a reliable determination of suitable demographic factors to be used in the evaluation of this pension plan as it affects members of OPSEU in particular and as it affects members of unions more generally. We need more experience data, which for various reasons are not yet available, and we need to analyse those experience data carefully with respect to the different types of members in the plan.

As I said, for the purposes of the analysis that we have been able to do today, we have simply assumed that the same factors would apply. We expect that a serious analysis of the experience of OPSEU's members would indicate that a valuation based on their own experience would result in significantly lower costs, or at least significantly more opportunity for the improvement of benefits.

We went on to examine the differences in the funding models that have been used by OPSEU and the government. Again, I will not go into the details of this before the committee, but the method used by the government, generally known as the "entry age normal" method, is quite

different in practice and in result from the method used by OPSEU, the unit credit method.

The unit credit method, in the most recent survey done by the Pension Commission of Ontario, was used by 55 out of 60 final pay plans that were surveyed, so the method that we are using is by far the more common with respect to final pay plans generally.

We want to emphasize one characteristic of the government's method within the framework of the "entry age normal" approach which we find inappropriate in relation to the interests of members at the lower end of the salary scale. It also applies to members that have relatively shorter periods of service.

The method adopted by the government presumes that every person participating in the plan should pay half of the average cost. The average includes everybody, from the top of the scale to the bottom of the scale; it includes everybody with short lives and long lives; it includes everybody who retires early and does not retire early.

Of course, the membership that we are concerned about tends to be at the lower end of the salary scale and tends not to retire as early, so we represent here a lot of people who are below the average. On the basis proposed by the government, people at the lower end of the scale are effectively being required to pay, upfront, at least, for more than half of their benefits. It is only the average member who will pay for half of his or her benefits in this government scheme.

The second point that we want to make about the government's chosen funding model is that there is no clear-cut distinction between the liabilities that exist for benefits already earned under the plan and the prospective liabilities for benefits which may be earned under the plan in the future. The legislation you have before you requires that any actuary working for the pension board adopt the model chosen by the government, the entry-age model, and in that model the liabilities for past and all future service are amalgamated. The assets which have accumulated today and the assets which may accumulate in the future are amalgamated, so it is very easy for a liability that will develop in the future to be transferred back into the past, or vice versa, without it being readily apparent to the layperson's eye.

There is a third difference between the funding models used by OPSEU and the funding model used by the government which is perhaps even more difficult to explain, but let me give it my best shot.

You all know that the pension fund associated with the superannuation act and the superannuation adjustment legislation is invested in provincial government debentures. Those debentures typically have a term of 25 years and all of them have a fixed rate of interest assigned to them. The average of those rates of interest on the assets which are already held by the pension fund is considerably in excess of the eight or eight and a half per cent that the actuarial profession would typically use for evaluating the extent of the liabilities and the value of the assets in the fund.

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In doing evaluation, we have to look at both sides of the balance sheet, of course. We have to look at the liability side and we have to look at the asset side and we have to take account of this extra interest which we know will be forthcoming on the assets which are already held by the pension fund. We have to consider the dollar amount of those assets that are already there and we have to consider the extent of the interest that will be coming in on those assets in future years.

When we do that, as we did in the model that was applied at the request of OPSEU, by adding the interest to the assets rather than taking it off the liabilities, which is the alternative, we come up with a significantly different picture of the unfunded liabilities that we have today.

In particular, we come up with an unfunded liability figure which is significantly below the number reported by the government. We believe there is a difference in methods of analysis here which on serious examination will be resolved in our favour and which indicates a significantly lower unfunded liability than the government would have us believe. More of that in a moment when I turn to the actual numbers themselves.

In any event, we can conclude, I think with some confidence, that OPSEU is using a credible and prudent actuarial model which is more conservative than the government's on economic variables and which can be supported by lower contributions from unionized employees.

The OPSEU basis also provides a more reliable estimate of the unfunded liability and maintains it as a distinct obligation because of the key differences between our funding models. This conclusion is especially significant since the new legislation would lock the plan in to the government's funding model. The act would not permit the plan to be funded on what OPSEU has been advised is the most appropriate basis from the perspective of a plan sponsor.

I want to emphasize to the members of this committee that when the group of actuaries and

consultants who went into this matter on behalf of OPSEU approached the project, they were specifically instructed to examine the question from the point of view of a prospective plan sponsor. We hope that would also be the point of view of the government on the other side of the relationship.

We also have some serious concerns about the method proposed by the government as the basis for amortizing the unfunded liability. On the face of it, it does not sound unreasonable that we should trust the government for 40 years. After all, you are still going to be here, but as I think someone made the point this morning, some parts of the public service may not, so there is a genuine issue about the security of benefits, just as there is in the private sector.

Rules exist in the private sector through the means of the Pension Benefits Act precisely for that reason, to ensure that proper funding is there to secure the benefits in the event of job security not being quite what it was expected to be in the first instance. The government proposes that the existing rules, which require any initial unfunded liabilities to be amortized over 15 years, be extended to 40 years in its case.

They also propose another thing. The pension commission will allow an employer in the private sector to amortize initial unfunded liabilities, not just as a flat dollar amount as we would with a housing mortgage, for example, but as a percentage of future payroll. But the Pension Benefits Act says that you can only do that on the future payroll of the people who are already employed. In other words, you cannot take account of people who might be hired in the future.

We have looked at the different levels of amortization payment that flow from these various methods of spreading the payments over the future. I especially want to draw your attention to the differences that result between the existing rules, the rules that the government itself has proposed in a consultation draft on the funding of indexing benefits, the rules that would be put into place in the Pension Benefits Act, and the rules which the government proposes to apply to itself in the legislation before you. On page 15 of our report, you see the differences.

The 15-year level payment, which until recently has been the standard rule for the amortization of unfunded liabilities, on the government's streamed assumptions would amount to about 12.9 per cent of the amount of the initial unfunded liability. If you spread that as a percentage of salaries for people already em-

ployed, the amount required goes up because of the relatively high rates of termination and other rates, the other decrements within the financial structure of the funding.

If you spread it over 25 years as a percentage of salaries, the amount of the payment required goes down slightly. Even if you spread it over 40 years as a per cent of salaries for the current people, again, it only goes down slightly. But if you spread it over 40 years and you spread it as a percentage of the future salaries of every person who may ever be employed during the future in the public service, the amount of the payment required drops quite dramatically. In fact, it is more than cut in half.

This dramatic reduction in the level of amortization payments indicated by the government's analysis leads us to suspect—and I emphasize the word “suspect”; we have not been able to confirm it as yet—that the level of payments contemplated by this legislation is in fact lower than would be required if the government simply continued its existing pay-as-you-go approach to the financing of indexed benefits. That conclusion, I think, will be confirmed in the very near future.

There are a number of aspects of this plan which we collectively—Mr Hirst, Mr Laing and myself—believe actually require a significant amount of further study before we can advise our clients appropriately in this matter. I should emphasize that we are also of the view that if we were asked by our client whether we could operate within the framework proposed by this legislation, we would have to say no.

One thing that concerns us and which has not been addressed in any of the analyses that we have seen from the government is a simple problem of the distortion of results caused by averaging people into groups. You have heard how this organization is concerned about people at the bottom of the scale and the substantial benefits that people at the top of the scale can derive out of this pension plan.

When the actuary looks at the liabilities of the plan, he takes all of those people at the top of the scale and all of those people at the bottom of the scale and he lumps them into one group called, “Males, age 25 to 29; females, age 55 to 59.” All of that diverse experience is lumped into one category and of course the peaks and the troughs are averaged into one apparently smooth line.

We ran a test to see whether the average was actually reliable. The average is not reliable. If you calculate benefits for three people separately—you can see the work in its relatively simple-

minded form on page 16 of the report—and then do the average, you will find out that you are understating their liabilities by about 4.5 per cent on the past, by a slightly lower factor if you look at the future.

We think questions like that need to be clarified before anyone enters into a permanent commitment with respect to the operation of this pension fund, whether that be in the form of this legislation or in the form of some more reasonable agreement that might be established in the future.

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There is an indication here of a kind of blindness that results from no one examining this plan without having a salary of more than \$48,000 a year. That collective blindness is seen not only in the structure of benefits and contributions in the plan, but is seen in the way the government chooses to value the extent of the benefits and the value of future contributions.

I think I will leave it to the report to describe how that is accomplished from a technical point of view, but the result, as indicated on page 17, is that there is a kind of overstating of the cost saving that arises in the public service pension plan as a result of integration with the Canada pension plan.

First of all, the basis of the integration is unfair and discriminates against the lower wage earners. Second, when the government's actuaries examine the impact of integration on the liabilities and the assets they overstate the cost saving that arises from that same integration. We think this is a serious barrier to an equitable structure of benefits and contributions in the plan.

In the final nonconcluding section of the report we examine the nature of the guarantees and the control of the surplus in the plan. Our basic concern here is to illustrate or to indicate what happens if the level of contributions indicated by the government's analysis of this question is indeed, as we believe, higher than is necessary to finance the future benefit accruals of OPSEU's members and of union members more generally. The consequence of that higher-than-necessary contribution, given the funding framework within which this act would require any pension board to operate, that extra contribution will, under that model, be used to reduce the government's obligation for past service.

This problem is compounded by the deliberate element of conservatism that always operates in any set of actuarial assumptions and any model that is used, or at least should operate. The

actuary who is examining the plan from the point of view of the plan sponsor is saying:

"I want to be on the high side a lot more often than I want to be on the low side. I do not want to go back to the client saying, 'You need to pay more'; I want to go back to the client saying, 'In the future you can maybe pay a little less.'"

So there is a deliberate element of conservatism in the basis that is used to set contribution levels.

In the structure proposed in this legislation that deliberate element of conservatism would be via the "entry age normal" method which the legislation is locked into, transferred back into the past and used to reduce the government's obligations. It would not be there for the purpose of financing benefit improvements for the people who made the contributions in the first place.

I am almost embarrassed by this point because it may be nothing more than a technicality but the government again has this kind of blinkered view that this plan has always been a sort of 50-50 plan and that it should be 50-50 for every member who belongs to it. As I said, that just does not work in a plan where you have people from all the way at the bottom to all the way at the top. It just does not work; it does not work equitably, at least.

One of the things that we discovered in examining this plan is that even on the government's own basis of matching contributions and the funding model which it has been using for a considerable number of years now, it was obliged to file, as of 31 December 1985, an actuarial certificate with the Pension Commission of Ontario which recorded that the level of contributions required in future years would be more than was provided for under the act. Of course, they did not have the legislative authority to take that money, at that stage at least, away from the employees, the members of the plan. They chose to ignore the obligation they themselves had and in fact would appear, at least on a technical basis, to be in violation of the Pension Benefits Act.

We have not made a big stink about this because it is a technicality. The government could refile next week on the basis of the unit credit model, which we prefer, and the result would indicate that the level of contributions was indeed sufficient. The battle over the technicality would turn out to be a small one, but the point is that in order to do that, they would have to change to the very model which we recommend. Otherwise, technically speaking, they are in violation of the Pension Benefits Act.

We have concluded that further analysis is required in order to determine the full extent of the overcontribution by OPSEU members and union members generally which would be required if this legislation were implemented. At the same time, we do have some preliminary results which indicate the direction of our own thinking and our own analysis on this point. I have these notes in written form, Mr Chairman, if you find that convenient, but the main results are what concern me. I will read them as they are reported in these notes.

The main result is that the government has significantly overstated the extent of the unfunded liability, because its basis does not recognize the full value of the existing assets of the plan.

Second, on a level premium basis, the "entry age normal" basis that is apparently preferred by the government—I emphasize this is on the government's own basis—the plan can be supported by employee contributions calculated on an equitable basis of integration with the Canada pension plan. The results that support that conclusion are attached to these notes as table 2.

Furthermore, on a unit credit basis, again using the government's own economic assumptions, those same contributions on an equitable formula are more than sufficient to meet the first year's costs of the new pension plan as proposed.

In the absence of one of our team, Peter Hirst, I want to draw the committee's attention to the main conclusions of an opinion which he has filed with OPSEU. I am not clear whether I should read this in its entirety. We want it to be part of the record in its entirety.

The Chair: In order to have it part of Hansard, you are going to have to read it.

Mr Lee: Okay, I will read the whole thing. I believe you may have the text of this in your package.

Mr Lee: Just to save you the trouble of reading his very impressive curriculum, Mr Hirst is the president of the Canadian Institute of Actuaries, and he is a senior partner in a major consulting firm, Actrex Partners, in Toronto. He has been active as a consultant and policy adviser on pension issues for many years. In particular, we would like to recall his participation as a nominee of the government in the Public Sector Pensions Advisory Board.

The Chair: The clerk says we can make it an exhibit to the documentation that we have. It will not become part of Hansard. In order for it to be part of Hansard, you are going to have to read it. So I will leave it to your discretion.

Mr Charlton: That is correct. Just to make it clear, I think their reference to the record was to Hansard.

Mr Lee: We would like it in the record.

The Chair: Then you are going to have to read it.

Mr Lee: If it requires reading, I will go through it. It was prepared by Peter C. Hirst, 16 November 1989.

1. Introduction:

1.1 I have reviewed the act and the schedule.

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1.2 I am concerned about the lack of flexibility with respect to certain actuarial and funding matters and the fact that the new "plan" will continue to be government-run and controlled. I am also concerned that the government intends to apply different rules to this plan than it requires of private sector employment plans.

2. Lack of Flexibility:

2.1 In subsection 8(1) of the act, the definitions of "going concern assets" and "going concern liabilities" suggest that a unit credit method of funding would not be possible. It is hard to understand why this should be the case when the most common method used by actuaries in Canada for determining funding rates is the unit credit method.

2.2 Furthermore, subsection 8(1) of the act goes on to define "going concern valuation" as "a valuation...using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan."

2.3 The method proposed under the act is in accordance with generally accepted actuarial principles, but is it in accordance with generally accepted practices? The standards of practice of the Canadian Institute of Actuaries relating to the valuation of pension plans require an actuary to "explain to the plan sponsor the effect of the selected funding method(s) on the security of benefits and the stability and level of future contribution rates. The actuary should, in appropriate circumstances, examine the possible consequence of deficient or excessive funding." That is Mr Hirst's emphasis.

2.4 Any actuary operating under the terms of the act would need to qualify any certification and/or opinion to the effect that the method used is imposed by legislation, and would clearly need to explain the potential consequences of using this particular method.

2.5 The same can be said with respect to valuation of the assets. For example, subsection 8(3) of the act stipulates that where no market exists for an investment guaranteed by government, book value may be used instead of market. Why? A better substitute for market value could well be the discounted present value of future cash flows from the investment. Again, the actuary would be forced to use book value in this instance and, I believe, would have to disclose this in his or her report as well as the fact that this may not be an appropriate valuation method for this particular purpose.

2.6 It is difficult to understand why these restrictions on valuation methods are being legislated, and I believe it would create potential difficulties for any actuary attempting to apply professional judgement under the terms of the act.

2.7 Another area where there appears to be a lack of flexibility is with respect to clause 6(1)(d) of the act. This relates to the establishment of a separate plan for "any class or classes of persons who are members of the plan." This presumably would apply if, for example, OPSEU were to negotiate a separate plan for its members.

2.8 In that instance, the amount that would be transferred to the separate plan is the amount "specified to represent the value, as determined in an actuarial valuation, of the pension benefits of persons who will be members of such plan."

2.9 How would both the value of benefits and the corresponding assets be calculated in this instance, and what about any surplus or deficit? The method described in the definition of "going concern liabilities" would likely not be appropriate in these circumstances, nor would the method of valuing assets described in 2.5 above be appropriate.

2.10 Again, it may prove very difficult for any actuary to operate under the terms of these provisions. As a minimum, he or she is likely going to have to qualify any opinions and/or certification he or she might be asked to prepare.

3. Government Control:

3.1 Under the act it appears to me that the government will still have a significant say in the running of the plan. The proposed board does not appear to be at arm's length and there are a number of points at which the minister's and or/Treasurer's approval is required. At other points, significant authority seems to be given to the Lieutenant Governor in Council.

3.2 This is somewhat disconcerting in a plan that attempts to define both the benefit and the contribution levels, particularly where the 50 per

cent cost-sharing principle is clearly annunciated, subsection 7(1) of the schedule. In my view, such an arrangement can only work well where there is a mechanism for both the sponsor and the members to agree on appropriate adjustments as experience unfolds.

3.3 These adjustments can be to the benefits and/or the contribution rates and can be either increases or decreases, although any decrease is likely to be in respect of benefits for future service and/or future service contributions only.

3.4 Subsection 11(2) of the act refers to the treatment of actuarial gains—no mention is made of actuarial losses—and subsection 7(3) of the schedule allows for surplus to be used to reduce employer contributions. On the other hand, the government appears to have reserved to itself the right to increase employee contributions as is done by this act.

3.5 The implication of this is that the government appears to be saying, "If things go well we can take the credit by reducing our contributions, while if things go badly we can impose contribution increases on the employee and we will retain control of the management and funding of the plan." It is difficult to see any equity in this position.

3.6 I believe contribution holidays which benefit only the employer are appropriate, even necessary and desirable, for defined benefits plans where: (1) the employer contribution is not also defined; (2) employee contributions are not increased arbitrarily other than to help fund additional benefits; (3) any deficiencies are made up or paid for by the employer. That is the typical defined benefit plan arrangement found in the private sector. The act and the schedule do not appear to fulfil any of these conditions.

3.7 It seems to me that defining the contribution rate and defining the benefit formula are best managed under some form of joint-trusteed arrangement. Under such an arrangement, contribution holidays would be by mutual consent of the parties on any joint board and presumably would be applied to employer and employee contributions. Similarly, any contribution increases would be jointly agreed to, as would benefit increases or reductions. While the act contemplates the possibility of just such an arrangement, it certainly comes nowhere near even the appearance of being a joint-trusteed arrangement in terms of its management and control.

4. Inconsistencies with Ontario Pension Benefits Legislation:

4.1 It is disturbing to see that in a number of areas the act and schedule, either explicitly or implicitly, fail to comply with the Pension Benefits Act and regulations. Arguments are often made that governments, unlike corporations, live on and also have the power of taxation. Those arguments ignore the fact that in reality the power of taxation is not unlimited and the possibilities exist of privatization of some parts of government, etc.

4.2 Furthermore, I believe that in matters of this nature—that is, employment pension plans—governments should not only comply with their own legislation but should show leadership in this regard. To some degree, the credibility of the Pension Benefits Act itself depends on this.

4.3 The act and schedule should be brought into compliance with the Pension Benefits Act, and this is particularly so because of the power and control the government appears to have retained unto itself with respect to this plan.

This brief is respectfully submitted by Actrex Partners Ltd, Peter C. Hirst.

I think that is the extent of my presentation. As I said, I have here attached to the notes prepared for this purpose the information concerning the financial position of the plan which I referred to in my remarks. If you would like to have those, you are certainly welcome to them.

The Chair: We will make sure the clerk gets them and have them as an exhibit. Mr Todd, anything to add?

Mr Todd: No, we have nothing further to add, unless there are questions. We would be prepared to take questions on any of the material.

Mr Morin-Strom: First, I would just like to thank you very much for the presentation. Certainly the professional expertise you have brought in to the committee, I think, will be of assistance to us. It certainly makes very questionable a number of the assumptions that the government has used in its explanations behind the bill and the kind of calculations that it has done to justify a requirement of a one per cent increase in contributions.

Much of your presentation, of course, was rather technical. I suppose, in terms of the bottom line, what might be nice to have summarized again is what the contributions levels would have to be, in your best actuarial estimate, to have a fully funded plan on a sound actuarial basis, assuming that the unfunded liability, as the government has claimed, was set aside. Given the levels of pension benefits that have been promised into the future, the size of the fund to date and the rates of contributions to date,

you seemed to be saying late in your presentation, the current contribution rates are sufficient to fund the current level of benefits. I thought you were implying that. I wonder if you clarify it again.

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Mr Lee: Very close to it, at least. I have to emphasize here that we are still concerned to have more reliable analysis of two or three key components of that question. What I say has to be of a preliminary nature, but at the same time I doubt whether the two or three components which remain to be settled would alter the picture in a fundamental way.

When the government reported its view of the extent of the unfunded liabilities in this plan—I do not have the sheet in front of me—it was somewhere around \$1.6 billion. We have used the government's own economic basis, with which, as we indicated, we are not entirely happy. What we consider to be a more accurate—not accurate, because their calculations are accurate. Do not misunderstand us. It is a question of how you look at the value of these assets in the future. When we look at them by what we consider to be the right method, the number which we come up with in comparison is less than \$900 million. We think there should be some more conservatism in the assumptions, but it is reasonably clear that the unfunded liability is in the \$1-billion range, not the \$1.6-billion range.

On the other hand, we do not believe that it is responsible to amortize that over a period of 40 years as a percentage of future payroll of the public service. We think the same rules should apply to the government as apply to the private sector. As you will see from the schedule of amortization factors that I referred to, it is difficult to get that factor down below 10 or 11 per cent of the unfunded liability. You are still talking about a fairly substantial payment towards the mistakes of the past. That is one element.

The second element is the future. OPSEU's starting point is that the existing structure of contributions is inequitable. That is because of the basis of integration with the Canada pension plan and because the one per cent increases have been stacked on top of both rates. As you see, they have got this complicated formula. It starts out at six per cent—sorry, seven per cent when you consider the Superannuation Adjustment Benefits Act—goes down to 5.2 and goes back up to seven per cent. This is their method of integration with the Canada pension plan. The

full amount of Canada pension benefits is coming off on the benefit side, but only part of the Canada pension is coming off on the contribution side. What is happening is that people are paying more and getting less.

Our starting point is, make that contribution formula equitable. Our position on that is that the contribution rate, if it is eight per cent, should be eight per cent minus the full amount of contributions to the Canada pension plan. The plan is currently integrated on the basis of the Canada pension plan as it was established in 1966, not as it exists today or as it will exist 10 or 15 or 20 years from now. People are paying more and more contributions towards their pensions and they are getting less and less benefit all the time because of the method of integration.

If we start from that proposition, that we are going to have an equitable formula for contributions, we are confident that in the first years of the operation of the new regime the employer can cover his future service obligation with a matching contribution. But as time goes by and as their past service obligations decline, their future service contributions will have to rise because they will have less revenue coming into the plan from employee contributions. But for the short term they can do it with a matching contribution on a fair basis.

Mr Morin-Strom: So are you satisfied that the level of contribution today is sufficient, in other words?

Mr Lee: It is certainly sufficient; it is probably more than required. When you say today, do you mean what is being paid today or what is being proposed in this legislation?

Mr Morin-Strom: What is being paid today before this new legislation, which increases it by another one per cent.

Mr Lee: What is being paid today is sufficient and reasonable as an employee contribution. The formula is not satisfactory for the long term, because it does not reflect the full extent of contributions being made to the Canada pension plan. That reality does need to be taken into account. There is a need for increased contributions to the public service pension plan.

Mr J. B. Nixon: You refer to the 40-year amortization period as being, from your point of view, unacceptable. I do not mean to put words in your mouth; stop me if I am characterizing them incorrectly.

Mr Lee: No, that is okay.

Mr J. B. Nixon: Perhaps you can tell me what the allowed amortization period is under the Pension Benefits Act.

Mr Lee: It is 15 years.

Mr J. B. Nixon: Are you aware that it can be varied by a decision of the Pension Commission of Ontario, upon application of the pension fund?

Mr Lee: I suppose it could, but the normal practice—I am not aware of any exemptions being granted—is 15 years. They only recently, as a result of amendments made in 1987, allowed for amortization on the basis of a percentage of payroll rather than just as a flat amount.

Mr J. B. Nixon: But you are not aware that exemptions cannot be granted?

Mr Lee: I am surprised that exemptions would be considered. I do not know of any actually in existence.

Mr J. B. Nixon: I would suggest to you that in a serious situation such as we find ourselves in, if this was a pension fund governed by the Pension Benefits Act, the pension commission might very well consider an application for an exemption.

Mr Lee: I would be curious to know under what section of the act you would apply for that.

Mr J. B. Nixon: I do not have the act in front of me, but I suppose it is the general application section that entitles anyone to apply to the commission.

Mr Lee: I would have to be persuaded that it was possible.

Mr J. B. Nixon: On the other hand, this is not a pension governed by the Pension Benefits Act.

Mr Lee: Yes, it is.

Mr J. B. Nixon: Let me ask you a question. I am glad Mr Morin-Strom suggested that we have some government representatives here. You have made some very serious allegations, that you believe this pension fund is in contravention of the Pension Benefits Act. Is that correct?

Mr Lee: Yes, I believe that is the case.

Mr J. B. Nixon: Having heard that, with your permission and the committee's permission, Mr Chairman, I would like to hear the government witnesses respond to that, because it is a serious allegation. I would like to hear what the government has to say about it.

The Chair: I think probably the best way to proceed would be—I have Mr Furlong on the list and I do not have anybody else—to let Mr Furlong have his questions and then, if there are not any other statements or questions on the presentation, we could finish with it and then bring the representatives of the ministry forward. Is that a process you could live with?

Mr J. B. Nixon: Sure I can. No problem.

Mr Furlong: First of all, I would like to compliment you on your presentation. It certainly was informative to hear some of these things again, as I heard a lot of it before with representations from OPSEU and others. In August 1987, at an all-candidates forum that was sponsored by OPSEU at the Whitby legion, I was asked a question about pensions. My response was that: "I think it is your pension plan. You should take it and run with it and forget about the government guarantee or anything else." Sitting here today and listening to the presentation, I want to tell you that view is enforced.

You have said, first of all, that the plans have been managed badly by the government. You have said that you could do a better job. You said our actuarial calculations are incorrect. There is nothing good about this plan as far as you are concerned. So I am asking the question, and I am saying it seriously, why do you not put us out of our misery and take the plan? I am curious. What is the problem in taking it over? That is an option that is available in this legislation.

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Mr Lee: There is no problem in taking it over, and I believe you will find in Mr Hirst's submission and in my own that the notion of a joint-trusted plan is very favourably considered and that—I believe I am not speaking out of turn—all three members of our technical team are very much of the opinion that a joint-trusted pension plan is the best way to manage this kind of operation for the future.

At the same time, we cannot advise this client that it would be reasonable to enter into such an arrangement within the framework of the legislation before you, because it imposes an actuarial straitjacket on the operations of the pension board which is designed, so far as we can see—perhaps without intent, but in any event this is the effect that would follow—to use excessive contributions in the future and surpluses that have developed today to retire the government's obligations. That does not constitute a joint-sharing arrangement; that is an actuarial straitjacket. There is no meaning to joint control within that framework.

Mr Furlong: I am not speaking of joint control; I am talking about a completely member-run plan. The government has indicated that it would guarantee the plan deficit to date. Even from a business point of view, when you are looking at the investments that you could have made, you indicated that investments were not made to maximize the provisions of the plan.

You were indicating that other things could happen if it were done in a different way. I wonder why you are not pursuing that avenue with great vigour. To me it seems to make all kinds of sense.

Mr Todd: First of all, we are pursuing that. Second, one of the answers to your question is that suppose we project forward to the day when you agree to negotiate the plan and we become the plan's sponsor, the union becomes the plan's sponsor, or the unions that are represented here today. The assets of the fund come from contributions by employees and by the employer, which would continue. The point that we were making this morning and that we continue with this afternoon, is that if we want to have an improvement in the benefit—

Forget the past deficit for a moment and say that does not exist. We are now starting up a new fund from square one. We get a contribution of salary from employees and we get another contribution from the employer. Those are the two amounts that go in to make up the assets of the fund. If we want to have an improvement in the benefit, or if there is an actuarial problem that develops which requires a greater contribution and we either want more money, period, from the employer's side, or we want to improve the benefits in the plan and that costs more money and we want to enter into whatever cost-sharing arrangement we can negotiate, how do we obligate the employer side to make that contribution if there is not a dispute-settling mechanism in the plan?

That is the thing that is missing right now. We could come to the government and say, "We need another one per cent. We're prepared to put in 40 cents on the dollar; we're asking you to put in 60 cents," and you could say, "No, not only are we not going to agree to that 60-40 split, but we're not going to agree to put any money in at all." How do we resolve that dispute?

If you give us the plan in the form that you are talking about we could come to you and say, "This is what we'd like to do," and you could say: "We aren't doing it. Goodbye." That is not a plan where we have some negotiated rights over how the plan functions.

Mrs LeBourdais: Just by way of follow-up to that question, do you have specific reason to believe that your membership would support your completely running the program yourselves? Have you got some indication of that and do you have a strong confidence level that they are sufficiently versed in the ramifications of that, particularly in the area of liability?

Mr Todd: We would not want to underestimate the intelligence of our members. We spent a lot of time working with them, and yes, they certainly do know, not in the actuarial sense—everybody is not an expert in that way—but they have that gut feeling that we can do a better job. We think that we can.

Obviously, as with other plans of this type which are run by the unions concerned, we would also operate in an arm's-length way, similar to Ontario Hydro, for example. We could still be operated at arm's length by a board and there would be checks and balances placed in there so that no particular group or faction at any time could use this for improper purposes. We would have to have all the proper editing and financial controls in place, but yes, once that was done, we have the support of our members for that kind of an operation.

What we are saying is, the orderly way to proceed is from the present position, which is government as sole plan sponsor, to the stage where we have a jointly trustee plan. For example, no investment has ever been done of this fund outside of the imputed rate guaranteed by the government bond. If we put this into the financial markets, that is a lot of money, whether you put all of it or only a portion of it in at a time. Neither party has experience with exactly how to do that and how that would operate, so our argument is that we need a period of time in which we can see how that runs.

Another thing is that this plan has in it everybody in the Ontario government: management, bargaining unit people, it has other unions in it and it has a whole bunch of other outfits like the Algonquin Forestry Authority and I do not know who all. We do not know all the people who are in it because we have not been told, but there are a number of groups that belong to that plan. There are no records kept and there is no way at the moment of differentiating between who is an OPSEU member, who is a CUPE member and who is a management member of that fund, they are all the same, so part of the technical problem of moving to OPSEU only or all unions only or whatever combination you want to come up with relies on having a system for beginning to differentiate among the different types of members who are in there. Those records have never been kept. The Ontario government only knows that it sends a cheque to a retiree. Where they worked, whether they were in our bargaining unit, whether they were in management, whether they were in the Algonquin Forestry Authority, whether they were in

CUPE, whether they were in the Amalgamated Transit Union; none of that is known except by the fact that you happen to know that particular person.

Our argument is that government is the plan sponsor, that is the present situation, moving to joint trustee plan with investment, arm's-length board, dispute-settling mechanism for determining contribution rates and then, based on that experience, we move to the situation where the union takes over the plan and runs it with another arm's-length board which it would set up under a number of rules and regulations which we would have to come to our conventions and explain and get approval from our members to enter into.

Mrs LeBourdais: What I am trying to find out, though, very specifically, are you telling me you have a gut sense that your membership is supportive of this or that it has been brought up at some meeting and the question has been put to the members with a certain explanation of the fact and they have voted in some manner? Could you give me an indication of the vote?

Mr Todd: We have had this discussion at every convention since 1973. For example, there were discussions and votes centring around the establishment of the indexing fund in 1975. At each stage in this procedure where changes were made to the fund, there have been discussions and votes about what to do and there have been discussions and votes and resolutions passed at every convention about gaining control over the fund. That is the record and that is the official policy position of the union, which was confirmed at the last convention we had in February 1989.

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Mrs LeBourdais: Would it be fair to say that you have taken a vote fairly recently and in excess of 50 per cent of your membership would be in favour of a totally union-run plan?

Mr Todd: Ours is a democratic representation system, the same way as the Ontario government is, and we have delegates. The delegates are the people who were the people at that convention and who voted, if not unanimously, virtually unanimously in favour of that proposition.

The Chair: Thank you very much for your presentation and the presentation this morning. We are going to have representatives, I believe, from the Ministry of Financial Institutions coming forward at this time to address the concern Mr Nixon raised vis-à-vis whether—

Mr Charlton: Treasury.

The Chair: Treasury, sorry. Somebody is going to come forward from the government and talk about the concern about whether we are in compliance with the Pension Benefits Act or not.

Mr J. B. Nixon: Perhaps when the witnesses start I could ask a question by way of opening.

The Chair: Okay. If we could ask the someones to identify themselves, we will go from there.

Ms Clarke: I am Phyllis Clarke, Human Resources Secretariat, pensions policy branch.

Mr Brophy: I am John Brophy, Peat, Marwick, Stevenson and Kellogg.

Ms Bouey: I am Kathy Bouey, Ministry of Treasury and Economics.

The Chair: Maybe Mr Nixon can ask his question.

Mr J. B. Nixon: Ms Bouey, you have heard the testimony given by the previous witness or presenter regarding applicability of the Pension Benefits Act to this pension fund and whether or not the pension fund is in compliance with the various regulations of the Pension Benefits Act. You have heard read into the record the statement,

"It is disturbing to see that, in a number of areas, the act and schedule"—referring to Bill 36, I expect—"either explicitly or implicitly fail to comply with the Ontario Pension Benefits Act and regulations."

Do you have any comments in that regard?

Ms Bouey: Yes. I think it is fair to say that what the bill does in most cases is limit exemptions that were already present, except for the ones that have to do with putting the plan on a sound financial footing by paying off the initial unfunded liability.

There are four specific areas where the PBA is overridden.

Mr J. B. Nixon: Can I stop you there for clarification? When you use the verb "overridden," is that by virtue of oversight or is it by virtue of conscious decision and is there a proposed statutory authority for the overriding if it is a conscious decision?

Ms Bouey: It is a conscious decision and the bill contains explicit provisions for things to happen regardless of the provisions of the PBA.

Three of those four provisions relate to the payment of the initial unfunded liability. The basic one is that a longer time period was chosen than is normally permitted by the Pension Benefits Act. We looked very closely at this in terms of what might be feasible to do. A 40-year

period was chosen instead of the 15 years normally required by the Pension Benefits Act. The reason that was chosen was essentially one of the allocation that could be devoted versus what other priorities the government had.

I might note, though, that this is not without precedent. Faced with a similar situation, Quebec chose a period of 50 years and Massachusetts has chosen 40.

The difference between a government and the private sector is that governments do not go bankrupt. They can be relied upon to be in place to meet those commitments.

The second type of exemption relates to the method, as was also mentioned, as a percentage of future payroll. It is consistent with methodology used in the Pension Benefits Act. You are allowed to do it. We did take into account the expected future payroll, however. I think it is fair to say, though, that that has no penalty to the current members of the plan.

The way the initial unfunded liability is being paid off is that a set amount is determined when the initial valuation is done. At that time one looks at how the payroll is expected to grow and the amortization schedule has been set on that basis. It is set dollar amounts that grow as the payroll is expected to grow. If the payroll does not grow at that pace in the future, all that happens is that we change the percentage of payroll so that the dollar amount gets paid regardless.

Mr J. B. Nixon: That is paid by whom?

Ms Bouey: Paid by the government.

The third area is that the present value of future special payments, these payments in respect of the initial unfunded liability, is being included in the calculation for solvency valuation purposes. Otherwise, it could appear in the early years that the plan did not meet the solvency requirements of the Pension Benefits Act and we would be required to fund the amount by which it was not sufficient over a five-year period. It seemed a bit excessive to determine one amortization schedule and then be hit by a different kind of thing.

The final exemption relates to the fact that these assets will be transferred as debentures to the fund. At the moment, the public service superannuation fund is exempted, in terms of its investment policy, from the Pension Benefits Act. That exemption will be removed, if this bill goes through, so that instead there will be this more limited exemption that specifies that despite the PBA, the receipt and holding of these debentures will not be considered imprudent or

unreasonable. If we did not have that exemption, the fund would be considered too concentrated in investments and long-term government securities, so what this does is enable the transition for the current investment policy, which is in fixed-rate government securities, to a market fund in a systematic way.

Mr J. B. Nixon: Just so I am clear on the last point, prior to this bill being passed, if it is passed, what is the applicability of the Pension Benefits Act?

Ms Bouey: The Pension Benefits Act in general applies. However, there are some specific exemptions. In particular, the public service superannuation fund is not required to meet the normal investment requirements because it is forced at this point to invest in Ontario deposits.

Mr J. B. Nixon: So in effect this bill broadens the applicability of the Pension Benefits Act.

Ms Bouey: Yes, and it limits the nature of the exemptions for the future.

Ms Hošek: This morning, Mr Clancy said very forcefully that had the investments in the fund been handled in a way that he thought was better, there may not have been a need to deal with an unfunded liability or with the increase that is proposed in this legislation. Would you want to comment on that, please?

Ms Bouey: Yes. Based on the information we have, we are quite confident that market investments in the past would not have avoided the current financial difficulties of the fund. Since 1966, the government has paid almost \$500 million, in addition to its matching contributions, to fund deficits in the basic fund. If one looks at that in today's dollars, that is approximately \$1.3 billion. Even after these funds are combined, market investments permitted and the contribution rate adjusted for the future, there is still a deficit of close to \$1.9 billion which the government will be funding.

These deficit amounts by far exceed the additional returns available for market investments. When you look at the Rowan report, he looked at the potential for higher returns over a 10-year period that ended in 1985 and suggested that the higher returns would have amounted to \$510 million to \$710 million in 1985. So I think you can see we are talking in one case of about \$3.2 billion versus something, even converted to today's dollars, in the neighbourhood of \$1 billion. There is no way that market investments in the past would have prevented the current problem.

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Ms Hošek: Can I follow up on this?

The Chair: Yes.

Ms Hošek: Am I right in suggesting that the government will be paying for those liabilities, so it was to the government's benefit to have those liabilities as low as possible, and that in the calculations done by the actuaries about this plan, it would have been to the government's benefit to have come up with a lower unfunded liability rather than a higher one?

Ms Bouey: That is certainly correct.

Mr Morin-Strom: Is it fair to say that in terms of the overriding of the Pension Benefits Act, Treasury has done everything possible to keep the payments from the Treasury as low as possible in the early years?

Ms Bouey: It is certainly a method that starts off much lower than level dollar amounts would. We looked at a wide range of alternatives as to how these amounts could be funded. The two methods that seem to be most commonly used are level funding and the percentage of payroll. In terms of the money that was available to be allocated for this purpose, the percentage of payroll was the one chosen and it does give rise to lower amounts in early years.

Mr Morin-Strom: Oh, I see. We see the five different figures that we have just received from the actuarial representation we have heard, on page 15 of the OPSEU presentation, and it has the level payment figure, which says 12.9 per cent of the unfunded liability should be paid in the first year. Then in terms of payments based on payroll into the future, the percentages are all—much less than that, unless one makes the assumption that on increases in the future—I understand that would not be the normal practice.

Again, you have overridden to bring these figures. Instead of being anywhere from 11.3 per cent up, it is down suddenly to 4.9 per cent and you make a tremendous reduction, really, in the amount you have to pay in the early years.

Ms Bouey: If you look at it from the point of view of the burden on taxpayers, a level dollar amount over time, its real value drops. For example, if a payment is, say, \$500 million in the first year, by the next year it drops by whatever the inflation amount is and so on. What we have tried to do through the percentage-of-payroll methodology is to come up with something that has essentially a fairly constant, real impact in terms of taxpayers.

The Chair: Mr Macnaughton, I thought at one point you wanted to supplement—sorry, Mr Brophy?

Mr Brophy, I thought at some point in time you wanted to supplement the answers. Is there anything you want to add?

Mr Brophy: Yes. It was just a comment that Kathy just made with respect to the equalization between different generations of taxpayers. An equal dollar figure penalizes current taxpayers and has less impact on future taxpayers. This has the impact of having a comparable impact over the next 40-year period.

The Chair: Okay.

Mr Charlton: It might also have the effect of having current taxpayers know who to blame for the problems in the present plan.

Mr Macnaughton: I think it is important to consider what problem we are trying to solve. What funding is about is putting money aside and—

The Chair: Just for Hansard's benefit, you need to identify yourself.

Mr Macnaughton: Sorry. I am Bruce Macnaughton from the Ministry of Treasury and Economics.

The Chair: Okay. I had you down wrong on the list. Sorry about that. Mr Macnaughton, go ahead.

Mr Macnaughton: It is important to keep in mind the problem that we are trying to address. Not enough money has been set aside to provide benefits. If no money is set aside, the benefits would be paid when they are due in very large amounts as numbers of people start to retire. What we are trying to do is put money aside in advance. It is true that we are paying this debt over a long period of time, but it is also true that normal practice is not to provide retroactive indexation without funding. I think it is important to compare the situation that would prevail without the funding which is being put in to the amount of money that would be there if we continue this situation. What the government is trying to do is to stop this burden being passed to future generations. Without this funding it would be much, much worse. The contribution rates go to 4.2 per cent each, and the chart would go on further if the actuaries wanted to do so.

Mr Morin-Strom: I guess my point would be that it seems somewhat opportunistic for a current government—when the problem is today and is most easily explained to taxpayers today, you would think to some degree it is easier to sell starting to pay off the debt today rather than saying, "We're going to spread it over 40 years and the children of taxpayers today, 20 years from now, are going to pay the same amount, and

the grandchildren of today's taxpayers are going to still have that same relative burden for a problem that was created in recent memory." It seems to me that it would be a bit fairer to future generations to put a bit more of a load, in terms of a balancing, on taxpayers today.

The Chair: Increase the contributions from both parties?

Mr Morin-Strom: It would be fair, I think, to have level contributions. Then, at least in real terms, the amount of the contributions would go down and the impact on future generations would be somewhat lessened.

One final question: Ms Bouey, you have made the statement, and I think it has been made before, that there has been a commitment by the government to pay the unfunded liability. My understanding is that there is not a commitment in the legislation to pay the unfunded liability, that the first application of any surplus that gets generated is back to paying off that liability. Over the next 40 years that liability could well be absorbed very heavily by generations of surpluses due to actuarial assumptions or level of payments. The extra one per cent the employees are paying today could well be what will generate the surpluses to pay off that liability. Can you contend that the government will pay the full liability itself?

Ms Bouey: If I could just clarify, the bill indicates that if any surpluses arise they are first applied to solvency deficiencies, then to any subsequent deficits that arise and then to the initial unfunded liability. If you look at what a plan sponsor is required to do, and this bill has been drafted on the basis of the government sponsorship option, the plan's sponsor is required to ensure that there is enough money to pay the benefits, but no more. As such, it is responsible for ensuring that there are no deficits and would be entitled to the surpluses. The approach which is being taken is to ensure that the past deficit is funded; that is the commitment the plan sponsor is making.

Mr Morin-Strom: That could well be on the backs of the employees who are making the contributions.

Ms Bouey: I might also note that the calculated contribution rates that we have at the moment suggest that one per cent is not enough.

Ms Hošek: In the paper that he read, Mr Lee suggested that if he worked with the numbers a bit longer, he would be able to say that the burden on the employer of this particular method of dealing with the deficit is no greater than

pay-as-you-go or ad hoc financing was in the past. I would like to have a response to that if I might.

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Ms Bouey: That statement is definitely incorrect. When you look, as we did in the budget paper F, at what happens in terms of government expenditures before these reforms are in place and afterwards, if the bill goes through for 1 January, we will spend something in the neighbourhood of \$13 million extra this year from what we would have spent; next year, \$55 million; the following year, \$61 million, and the following year, \$66 million, etc.

Mr Charlton: Both in OPSEU's presentation, which was made by Mr Lee, and in the document which was submitted by Mr Hirst we have reference to the fact that the unit credit method of valuation is the most common actuarial method used for calculation of funding rates. Do you concur that this is correct, that it is the most common method used out there in the real world?

Mr Brophy: Yes, in Canada.

Mr Charlton: All right, in Canada. That is what I think of as the real world, as the pension world we are talking about; Ontario more specifically.

Can you explain to us a little better than you have why you chose not to use the unit funding method?

Mr Brophy: The rationale for "entry age normal" versus unit credit was really to come up with a more level and consistent contribution level in the future. Mr Lee indicated that the "entry age normal" takes an average and uses different rates, depending on whether you are young or you are old. It is actually the reverse. The unit credit averages everyone whether you are young or old, because the unit credit bases contributions on your attained age at the point in time of the valuation. The "entry age normal" utilizes the age at which you come into the plan. If you are 55 or 60 years of age but you came into the plan at 24, it calculates the contribution as of your entry age, not your attained age. So it is a much fairer method. It comes out with a more even contribution level and it is less likely to cause increased contributions in the future.

Mr Charlton: Let the record show that the other half of the profession nodded "No."

Mr J. B. Nixon: I am not sure which of you can speak to this question, but I have two questions relating to the demographic profile of the members of the plan. I am wondering if you could roughly outline the demographic profile, if

it is possible, of members of the plan—and I do not want details—in 1975 when the government made the decision to index all existing employees' future pension plans and all retired employees' pension plans. If you do not have it now, can you get that information later.

Mr Brophy: The ratio of contributors to pensioners back in 1976 was approximately five to one.

Mr J. B. Nixon: So there were five contributors—

Mr Brophy: Active contributors to each pensioner.

Mr J. B. Nixon: What is that ratio now?

Mr Brophy: The ratio now is approximately two and a half.

Mr J. B. Nixon: It has been roughly cut in half. There is one pensioner for every two and a half employees in 1989, whereas there was one pensioner for every five employees in 1976.

Mr Brophy: Yes.

The Chair: Just for my clarification, to build on Mr Nixon, that included the retroactive decision, lump-summed everybody together to give everybody who was currently—

Mr Brophy: Yes.

Mr J. B. Nixon: It is a fairly facile observation on my part, but does this reflect the ageing nature of our population, and is it your projection that the ratio will continue to collapse or reduce over time?

Mr Brophy: The projection is that it will continue to decline for a number of years and then level off at approximately one to one.

Mr J. B. Nixon: When?

Mr Brophy: It will start levelling off at one to one in approximately 2010.

Mr J. B. Nixon: So we will have one pensioner for every one employed member. What does that do in terms of the obligations of the pension plan? How does it affect the obligations?

Mr Brophy: If you prefund it has almost no impact; if you do not prefund then obviously you have got a serious problem.

Ms Bouey: Just as a point of clarification there, if you leave the funding on a pay-as-you-go basis, as the indexing now is, then you have a problem.

Mr J. B. Nixon: I agree, it would be a disaster.

Ms Bouey: Yes, but if you fund as people are earning their benefits, which is what has been

proposed in the bill, then the assets are there to pay the benefits.

Mr J. B. Nixon: Given that—if I can just summarize—I did not realize the ratios were changed that significantly. If we are heading towards a one-to-one ratio and we do not start funding now and eliminating that deficit, we are going to be paying these pensions straight out of the consolidated revenue fund and we will just be collecting taxes to pay pensions. Essentially it will end up like it was in the 1970s where the pension fund liability is driving the business, or in this case will be driving the government.

Ms Bouey: Yes. I might note that Newfoundland has already discovered it is facing that problem.

Mr Charlton: Just on the same point about the declining ratios between the pension contributors and pensioners, would it be fair to say that roughly the same thing is occurring out there again in the rest of the real world in Ontario in terms of the private sector pensions that we have talked about?

Mr Brophy: In the private sector there is no doubt the demographics are going the same way, except that in the private sector you prefund and the intention is to have sufficient assets when an individual retires, so there is no problem of ensuring that current active members are paying for pensioners. But that is the requirement of the act.

Mr Charlton: The question was intended just to make the point, though, that the same thing is happening and pension plans are being managed in a fashion which has been suggested here by others, and is being rejected by this government, and not running into the problems that are being created here.

Mr J. B. Nixon: I would be interested in getting a response from the witnesses to that comment.

The Chair: Who wants to take a stab at it?

Mr Brophy: I can start it. The basic comment is that it is quite a bit different. If you fund the plan, you really do not have any problem. Under any method, "entry age normal" or unit credit, the intention is to have sufficient assets when individuals reach retirement age so that there is no additional funding required. There should be no funding post-retirement; this is what this bill is doing.

Ms Oddie Munro: I was concerned about the two presentations that were made, one by the gentleman from the Ministry of Correctional Services relating to stress factors and early

retirement. The other was the part-time worker who was classified as regular part-time. We will be going into it, and I relate best to examples as they then relate to the technical details. I think she indicated that she had considerable extra hours accumulated—I think it was approximately 400—and felt that there was no credit coming back out of the pension scheme for that. If that pattern seems to be a regular occurrence, what would be your reaction? How would you cope with that, since that was an example that was raised? I am just wondering how we would handle that if it seems to be more a normal occurrence than not.

Ms Clark: I will respond to that question. The issue this morning was a part-time worker who was limited to making contributions based on the earnings during the regular time of work, so essentially the overtime work was not counted. The salary, the way it is defined in the act, now does exclude overtime.

The purpose of that exclusion—it was based on thinking about full-time workers rather than part-time workers—was to prevent a member from getting a spurt of additional work at the end of the career that then is lumped into the pension plan. But you are right, the case this morning clearly does not fit into that scenario. So I think it is fair to say that we are going to investigate the merits of that in light of the changes that we have

made to the act for part-time workers and consider that there may be the necessity of a change in the definition of overtime. However, that is something that also we should reconsider, I think, in a larger—there is a larger group of questions here. For example, perhaps we should look at the person's work schedule and just consider, in that general context, should that person be reclassified or should the position just be re-examined? But it is definitely a different kind of question than we had considered and we will look into that.

Ms Oddie Munro: I notice that under the new legislation all unclassified part-time or seasonal employees have the option to join. That would take into account that group of people. This is for someone who is already classified as regular part-time. I wondered if—it seemed to be a very cogent example—you would be willing to take a look at that.

Ms Clark: Absolutely, yes.

The Chair: Any other questions or comments? Thank you very much. We will not be meeting next week, 30 November. Our next time together will be 7 December at 10 o'clock when we will start into clause-by-clause. The committee stands adjourned.

The committee adjourned at 1650.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: Furlong, Allan W. (Durham Centre L)

Bryden, Marion (Beaches-Woodbine NDP)

Charlton, Brian A. (Hamilton Mountain NDP)

Cureatz, Sam L. (Durham East PC)

LeBourdais, Linda (Etobicoke West L)

McLean, Allan K. (Simcoe East PC)

Nixon, J. Bradford (York Mills L)

Oddie Munro, Lily (Hamilton Centre L)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Substitutions:

Hošek, Chaviva (Oakwood L) for Mr Velshi

Morin-Strom, Karl E. (Sault Ste Marie NDP) for Ms Bryden

Clerk: Carrozza, Franco

Staff:

Hopkins, Laura A., Legislative Counsel

Witnesses:

From the Ontario Public Service Employees Union:

Clancy, James, President

Oliver, Michael

Phillips, Rose

Todd, Andrew, Chief Negotiator

Lee, Don, Actuary

From the Ministry of Treasury and Economics:

Bouey, Kathy, Director, Intergovernmental Finance Policy Branch

Macnaughton, Bruce, Assistant Director, Pension and Income Security Policy

From Peat Marwick Stevenson Kellogg:

Brophy, John, Partner

From the Management Board of Cabinet:

Clark, Phyllis M., Director, Pension Policy Branch



Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Public Service Pension Act, 1989

Organization



Second Session, 34th Parliament

Thursday 7 December 1989

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 7 December 1989

The committee met at 1013 in room 228.

PUBLIC SERVICE PENSION ACT, 1989 (continued)

Consideration of Bill 36, An Act to revise the Public Service Superannuation Act.

The Chair: Today we are going to be dealing with Bill 36, clause by clause. I propose that we start with section 1 of the bill. I believe there is a government amendment.

Mr J. B. Nixon: Perhaps I could assist you and ask first of all that two members of the staff come forward. Perhaps they can introduce themselves for the record.

Mr Sola: Mr Chairman, in your musings, did you not suggest we should get around to electing a vice-chair?

The Chair: Oh, yes.

Mr J. B. Nixon: Can we do that at the end of the day?

The Chair: Good idea, yes. Let's do clause-by-clause first and then we will do it.

Mr Morin-Strom: What were you after, Mr Chairman?

The Chair: We are starting with clause-by-clause. Oh, John was talking about an election of a vice-chairman, but I guess we have to deal first with the resignation before we can deal with an election. We will come back to that at the end.

Mr Morin-Strom: After clause-by-clause; maybe next week.

Section 1:

The Chair: Mr J. B. Nixon moves that section 1 of the bill be amended by inserting after "crown" in the first line "employer."

Mr J. B. Nixon: It is a simple amendment, just to clarify the definition of employer so that the definition of employer under the act is the same as the definition of employer under the schedules.

Motion agreed to.

Section 1, as amended, agreed to.

Section 2:

The Chair: Mr J. B. Nixon moves that section 2 of the bill be struck out and the following substituted therefor:

"2. Subject to subsection 14(2) and to section 24 of schedule 1, this act applies to every person employed after the 31 December 1989 in the service of an employer."

Mr J. B. Nixon: It clarifies that the indexation benefits as set out in section 24 of the schedule continue to apply to those members who terminated under the Public Service Superannuation Act but have not started to draw a pension, which is the intent of the schedule. The purpose of the amendment is simply to confirm the intent as it is set out in the schedule.

Motion agreed to.

Section 2, as amended, agreed to.

Sections 3 to 5, inclusive, agreed to.

Section 6:

The Chair: Mr Morin-Strom moves that section 6(1) of the bill be amended by adding at the beginning thereof "On the recommendation of the board."

In front of "The Lieutenant Governor in Council"? Is that what you are recommending?

Mr Morin-Strom: Yes.

The Chair: So that the proposed amendment would read, "On the recommendation of the board, the Lieutenant Governor in Council by order may amend the plan and, without restricting the generality of the foregoing, may."

Mr J. B. Nixon: Briefly, we are opposed to the amendment although it would be an attractive proposal if we were into a partnership model. That decision has not yet been made. The options are there to choose the partnership model or for the union to take full responsibility, but in advance of those decisions having been made, what you are doing essentially is suggesting that the powers and the responsible exercise of those powers of the Lieutenant Governor in Council be restricted, and we cannot accept the restriction. It just does not make sense from an administrative point of view.

Mr Charlton: I understand the concern that the member for York Mills has raised, but it is not a concern that is real. Until there is a partnership, the government is in total control of the board. So what is the problem?

Mr J. B. Nixon: The problem simply is that we do not want a board to be sitting there having restricted its own powers. The government is still responsible for this plan and still guarantees it.

Mr Charlton: And under this bill the government is responsible for the board.

Mr J. B. Nixon: That is right.

Mr Charlton: The board is in your control.

Mr J. B. Nixon: And we do not want to restrict that control, that is all. The control is exercised by the Lieutenant Governor in Council. We do not want to restrict that control to that extent.

Mr Morin-Strom: I think this particular clause brings out one of the most serious problems with this bill, and that is the absolute and arbitrary power that is being given to the Lieutenant Governor in Council to be able to change a bill. Schedule 1 covers more or less the terms of the first option, which in reality is the only option in the bill. It is quite unusual for the Lieutenant Governor in Council to be able to make arbitrary changes, or any changes for that matter, to legislation.

Although I understand there may be one or two exceptions, in the normal course of events, and almost without exception, changes to legislation require going back to the Legislative Assembly itself. This clause is the operative one that gives the cabinet the right to make unilateral changes to the terms and detail contained in this bill, and that is quite an extraordinary power to be given to the cabinet. Normally a cabinet has the right to set and change regulations but not to go in and change the actual wording of legislation. This clause is the one that gives the cabinet the right to go in and change the wording to the details of how the pension plan is going to operate, which is under schedule 1.

In this case, we feel that at the very least we should be giving some semblance of independence, of an arm's-length relationship, to the board and giving the board some say over changes that may be made to the pension plan in the future under schedule 1. We feel that the cabinet should not be able to go in and make these kinds of arbitrary changes unless it is making them on the recommendation of the board.

At the present time my colleague's point of view is correct, that the composition of the board is totally in control of the cabinet, so this change alone will not put the changing of the plan into an arm's-length relationship from the government. However, we will be moving further amendments that will ensure that the composition of the

board is a balanced one so that in fact changes to the pension plan can come only out of a fair process, an arm's-length process, in which the cabinet does not have the kind of absolute authority to go in and change terms of legislation, which is not the normal practice in this Legislative Assembly.

Mr J. B. Nixon: Briefly in reply, I think the proponents of this motion are sort of mixing apples and oranges. It has always been the case that regulations are dealt with by the Lieutenant Governor in Council. Under existing pension plans in the public service or the quasi-public-service vein, such as OMERS, Ontario Hydro and so on, the level of benefits is always dealt with in that manner, by regulation by the Lieutenant Governor in Council. This proposal is consistent with the way we have operated in the past. It is not the board that sets the level of benefits. I think it would be very unusual, and indeed unworkable, if we were to require that levels of benefits in schedule 1 be adjusted by legislation. All three parties know what sort of problems we have in getting any piece of legislation through this Legislature. If we were going to be making minor adjustments in schedule 1—the benefits—by way of legislation, and if that philosophy spreads, this Legislature would become unworkable simply because of the backlog.

Mr Charlton: Again, the member for York Mills is correct. The cabinet has always made regulation by order in council, but read section 6. This is far more than regulations we are dealing with here. This is regulations and the act itself. This section 6 allows the cabinet, by order in council, to in fact scrap the entire pension plan and replace it with a new one without talking to anybody. This is not the regulatory process, as my colleague suggested earlier, that is the practice around this place.

To do the kinds of things that this section 6 does there has normally been a requirement to go back to the Legislature. If we were simply talking about regulations, then that is one thing. What we are talking about here is total control over this act and its future outside of the legislative domain.

The Chair: I will allow one more exchange, I think, and then call the question.

Mr J. B. Nixon: All I would say by way of advice to the committee is that this pension plan, like all pension plans, is subject to the rules of the Pension Benefits Act. There is no ability to unilaterally terminate a pension plan. No pension

plan sponsor has that ability, and neither would the government in this case.

Mr Morin-Strom: Again, the member for York Mills is totally wrong.

Mr J. B. Nixon: That is better.

Mr Morin-Strom: The way he distorts things is just unbelievable. This is not just affecting the regulations; this is giving the cabinet an arbitrary right to change the whole plan. In particular, the member says that this plan is subject to the Pension Benefits Act, and it is not. Many aspects of this in fact are not going to be subject to the Pension Benefits Act. There are specific exclusions within this act which exempt aspects of this act from the Pension Benefits Act, and those have to be addressed.

We do not want to have a system where there is one pension law for private pension plans in the province of Ontario and workers who are working for other organizations in Ontario, either private or public, have protections that public servants will not have. This act denigrates the rights of public servants of the province of Ontario. Public servants do not have the same kinds of rights under the Pension Benefits Act that other employees in the province do because of the specific exemptions that have been given in this act.

This particular clause, which gives the arbitrary right to the cabinet to make changes at its own whim to the pension plan of the public servants of this province, is totally unacceptable.

Mr J. B. Nixon: I suggest to the member that he read the Pension Benefits Act. He will find out that employees in the public sector have more rights than employees in the private sector under the Pension Benefits Act.

Mr McLean: I was reading the explanatory notes and I observed that the Lieutenant Governor in Council will be able to amend the plan by order. Following up on what Mr Morin-Strom has just said, are the civil servants not the ones who drafted this legislation?

The Chair: I believe it was legislative counsel who drafted it.

Are we ready to vote on the proposed amendment?

Mr Morin-Strom: Can we have a recorded vote?

The committee divided on Mr Morin-Strom's amendment, which was negated on the following vote:

Ayes

Charlton, McLean, Morin-Strom.

Nays

Furlong, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 3; nays 5.

1030

The Chair: Back to subsection 6(1) as proposed. All those in favour? Opposed? Carried.

Subsection 6(2)? Carried.

I believe we have an amendment to clause 6(3)(d). Should we break them down (a), (b), (c)? So on clause 6(3)(a)? Agreed. Clause 6(3)(b)? Agreed. Clause 6(3)(c)? Agreed.

Now we are on to clause 6(3)(d).

Mr Morin-Strom moves that clause 6(3)(d) of the bill be amended by inserting after "mediation procedures" in the first line "including binding arbitration."

Mr Morin-Strom: This is the operative clause which would give the possibility of the government entering into an agreement with members to establish a joint control over the plan.

We do not see any possible way of entering into a joint agreement that has any meaning whatsoever unless there is some kind of mechanism for resolving disputes. We do not see that the current language has a dispute resolution mechanism within it and we feel that the legislation should include not only the possibility but the mechanism for the only way that any such joint agreement can ever be achieved, and that is by including a dispute settlement mechanism. In our view, the only realistic one is including not only mediation procedures but also binding arbitration.

I think if the government is serious at all about the option of having a joint agreement, there has to be a mechanism for resolving disputes. Given that the operating clause here is in an area that cannot be amended by the cabinet arbitrarily, as the plan itself will be able to be, contained in schedule 2, if this clause does not include the possibility of binding arbitration, the government has effectively precluded that option from ever happening.

Mr J. B. Nixon: At the outset I would say that the government is quite serious about all three options and I would be quite willing to pursue discussions of those options with the interested parties.

Let me just remind the committee that Mr Rowan, who is the author of one of the two reports upon which everyone calls as an authority, depending on which argument you are making, recommended against binding arbitra-

tion. Although Dr David Slater advocated some sort of partnership model, he did not advocate for binding arbitration.

The problem, and the fact that there is not an identified dispute resolution mechanism of the nature which Mr Morin-Strom wants, does not in any way preclude development of a partnership model or other types of models.

Frankly, the problem we have with binding arbitration quite simply is that we are not talking about wages, immediate benefits, which can be matched as costs against immediate revenues, but binding arbitration on issues like pension payouts goes down the road 10, 15, 20, 30 years. To throw over to a third party the right to make a decision on a pension plan for benefits a generation hence, taking it out of the hands of the government and the union, I do not think is in anyone's best interests and I am urging our members not to support the amendment.

The committee divided on Mr Morin-Strom's amendment, which was negatived on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Furlong, LeBourdais, McLean, Nixon, J. B., Sola.

Ayes 2; nays 5.

The Chair: Are we ready to deal with clause 6(3)(d) as proposed? All those in favour? Carried.

We will continue in the same way. Agreement on subsection 6(4)? Agreed. Subsection 6(5)? Agreed. Subsection 6(6)? Agreed.

Section 6 agreed to.

Section 7:

The Chair: I have to break it up, because we have a proposed amendment. Subsection 7(1)? Carried. Subsection 7(2)? Carried. Subsection 7(3)? Carried. Subsection 7(4)? Carried. Subsection 7(5)?

Mr Morin-Strom: I think my second amendment gets inserted at this point.

Mr J. B. Nixon: You are amending subsection 7(5) by applying section 7a. Is that what you are—

Clerk of the Committee: That is a brand-new one. The section you have is 7a.

Mr Morin-Strom: No, no. It goes after section 7; I am sorry.

Clerk of the Committee: After section 7.

Mr Morin-Strom: Yes, I have it.

The Chair: Okay. Where were we? Subsection 7(5)? That was carried. Subsection 7(6)? Carried. Subsection 7(7)? Carried. Subsection 7(8)? Carried.

We have an amendment for subsection 7(9) and subsection 7(10).

Mr Morin-Strom moves that subsections 7(9) and 7(10) of the bill be struck out and the following substituted therefor:

"(9) In compliance with the investment requirements established under the Pension Benefits Act, 1987, for pension funds, the board may assign or transfer a debenture of Ontario held by the fund, notwithstanding any term in the debenture to the contrary, if the board considers it reasonable and prudent to do so."

Do you have an explanation?

Mr Morin-Strom: These two clauses are critical clauses which prevent the management of the pension plan from achieving the prudence requirements of the Pension Benefits Act. I think the studies that have been done for the government by Coward, Rowan and Slater have indicated quite clearly that the plan has been mismanaged because of the necessity for the plan to be totally invested into government of Ontario notes, debentures which are nontransferable and nonassignable.

In order to meet the prudence requirement of the Pension Benefits Act, the board has to have the right to be able to balance its investment policy and move investments out of Ontario government debentures into other types of securities, other types of bonds and debentures and into common equity. For this plan to be able to achieve the kinds of returns that have been achieved in other pension plans, particularly those in the private sector, it has to be able to have a balanced investment policy.

As I understand the act, the government is suggesting that the only funds that will be able to go into other types of investment are new net funds that come into the plan year to year. Our belief is that if prudence requirements are mandated for the management of other pension plans they should also be mandated for this plan and that this plan should have to live up to the same requirements of the Pension Benefits Act that other plans do.

1040

Proper management of this plan means a balanced investment policy that can only be achieved by divesting this plan of large amounts of government securities that it currently holds. That means that this plan and the managers of this

plan, the board, have to have the right to be able to override current nonassignment, nontransferable provisions on those securities to be able to divest themselves and trade with other pension plans.

The market is certainly there in terms of other pension plans, other mutual funds, other institutional investors who undoubtedly would be quite interested in having government of Ontario securities. I do not think there is any question that the securities can be marketed at a market rate and it would allow the management of this plan to then take those funds and balance its investment policy with bonds and debentures of other types, both private and public, and as well get into equity investments with the funds in order to achieve the maximum prudent return that is achievable on a pension plan.

I guess what upsets us most is that these two provisions are basically exempting the management of this plan from the prudence requirements of the Pension Benefits Act and we do not think that this board should be given an exemption from those prudence requirements.

Mr McLean: I just wanted a clarification from the member. In subsection 7(10), the last three to four lines, does that not cover pretty well what you are talking about with the accountability of the board determining future investments of the plan?

Mr Morin-Strom: The last few lines basically tell the board that the board does not have to live up to the prudence requirements of the Pension Benefits Act with regard to these investments. It is saying that this particular board can hold a tremendous percentage of its investment in government of Ontario securities, which the Pension Benefits Act would not allow the board to do normally because the Pension Benefits Act does not allow you to invest all of your pension funds into one type of security. It mandates a balanced investment policy which protects the interests of the plan and provides the opportunity for us for a more likely—let us say less risk. It would provide less risk and a greater return on the investment.

Mr J. B. Nixon: I agree with much of what Mr Morin-Strom has said, but that is because I think he is simply reciting much of what Mr Rowan said in terms of advice to the government and it is a philosophy and view that the government has adopted. We believe that the investments of the pension plan have to get out into the market, into the equities market, where they can get a better rate of return. We agree that a better rate of return can likely be obtained in the market than in the

required lending to the government, at rates which were not that bad, by the way, at 11 1/4 per cent earlier this year. I would not say that these were money-losing investments necessarily.

In any event, what the member is asking us to do is something that the government is not prepared to do. We are not prepared to continue that guarantee in perpetuity if one of the partnership models is chosen whereby the union takes responsibility for the plan. The Treasurer of Ontario (Mr R. F. Nixon) has made it quite clear that that guarantee would not continue and that is a prerequisite to entering into an entire employee-sponsored plan. If you take a look at subsection 7(10) in the schedule, which you want to take into legislation and out of regulation, that is exactly what it does.

I know you disagree with me. I know you are going to say I do not know what I am talking about, so in order to pre-empt you I am going to say I do not know what you are talking about, and I do not think you do either, but I know you are going to tell me I do not, so it is okay.

Mr Morin-Strom: Talk about the amendment I just made. What are you talking about?

Mr J. B. Nixon: I am talking about his amendment. If he is not going to listen, that is his problem.

Mr Morin-Strom: Well, make some sense.

The Chair: Without trying to get into some personal attack, let us try to—

Mr J. B. Nixon: Yes, I agree.

Mr McLean: I guess we will decide what is right then, if they are both wrong.

The Chair: Are you finished, Mr Nixon?

Mr J. B. Nixon: No, I am not.

The Chair: All right, keep going then.

Mr J. B. Nixon: The point is simply that the government is moving the assets of the pension plan very quickly into the marketplace, much faster than Rowan required. The government has agreed to pick up the deficit for any alleged mismanagement, which may or may not exist. The requirement that we take this guarantee into legislation in perpetuity is unsatisfactory, simply because we are the people who have to provide that guarantee, and if one of the other partnership models is chosen by the union, then the guarantee will not be there.

Mr Morin-Strom: I do not know what he is talking about in terms of the guarantee. The point here is the Pension Benefits Act demanding prudence on the board's behalf and the management of this fund, and these particular clauses

allow the right to be imprudent, to not have a prudent investment policy that provides the best possible, least risk return on the investment. I do not know why you want to have one set of rules for pensioners and pension plans in other areas and then give a blanket exemption like this one to this one.

Mr Furlong: It is not blanket, it is discretionary.

Mr J. B. Nixon: It is not a blanket exemption. This is the best pension plan in the province of Ontario, if not the community of Canada.

Mr Morin-Strom: With the least return.

Mr J. B. Nixon: It will be one of the best funded. Certainly the benefits are the best in Canada, and it will continue to operate in that manner, notwithstanding what you want to believe.

Mr Morin-Strom: It is also about the most expensive pension plan anywhere in Canada in terms of the cost to members because of the mismanagement of this plan and the ongoing mismanagement contained in clauses like this one that forces the board not to pursue prudent investment policies to get the best return, lowest-risk management of the plan, but instead forces the board to continue to carry tremendous percentages. In the early years, over 90 per cent of the plan will still be invested in government securities which will have no right to assign or transfer. It will be stuck with those low-return investments.

Mr J. B. Nixon: All I wanted to say is that it is the best pension plan that I know of in Canada and, because of the very high benefits, it is expensive and we all understand that. If you want good benefits, you have got to pay for them. The government has agreed to pick the existing deficit, so whether there is mismanagement there or not, the government is funding that.

Mr Charlton: Just so we can get the record straight, it is not the best pension plan in Ontario and it is not the best pension plan in Canada. In terms of benefits, for example, it comes nowhere near equalling what we have voted for ourselves.

Mr Furlong: The risks are not quite the same.

The committee divided on Mr Morin-Strom's amendment, which was negated on the following vote:

Ayes

Charlton, McLean, Morin-Strom.

Nays

Furlong, Hošek, LeBourdais, Nixon, J. B., Sola.

Ayes 3; nays 5.

The Chair: Shall subsection 7(9) as proposed carry? Agreed. Subsection 7(10) as proposed? All those in favour? All those opposed? Carried. Subsection 7(11)? Agreed.

Section 7 agreed to.

1050

The Chair: Mr Morin-Strom moves that subsection 7(5) of schedule 1 of the bill be renumbered as section 7a of the bill.

Mr Morin-Strom: I think we should just read into the record what this clause says. Section 7a, which would now be moved into the main part of the bill, reads as follows:

"If in any year the amount of cash and assets capable of sale in the fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the consolidated revenue fund an amount sufficient to make up the deficiency."

The Chair: Where are you reading that from?

Mr Morin-Strom: I am reading from schedule 1, subsection 7(5), page 18.

This section is currently in that portion of the bill that can be changed quite arbitrarily by the Lieutenant Governor in Council. So there is no guarantee whatsoever in this bill that this clause will be in place next year or 10 years from now, because the cabinet has that arbitrary power to unilaterally abandon this commitment, which appears like a commitment because it is written in the bill but has no basis for continuing, given the right the cabinet has given itself, back in section 6, to arbitrarily change anything in schedule 1. Therefore we want to have the absolute assurance that the Treasurer will guarantee the solvency of the pension plan, and to do so we feel this clause has to be moved into the main part of the bill.

Ms Hošek: This section that you would like to move actually refers to the cash flow guarantee of the government. What it means is that the government guarantees to cover the pensions when they have to be paid out. It is not possible to keep that guarantee if we should come to a point when negotiations would lead to a member-run pension plan.

The principle of the bill the way it is structured is that it is a bill that should be able to cover at least three models of governance. The first would be government-run, the second would be partnership and the third would be member-run. All of us were here when the representatives from the

Ontario Public Service Employees Union said that they would like at some point to have a separately run, union-managed union fund. If there were a member-run fund, it would not be possible for the government of Ontario to guarantee the cash flow and the payout of the pensions. That is the reason that that is sitting in the schedule rather than in the legislation: so that it is sitting there as a guarantee for the current arrangement, which is government-run. Should there be a change in governance, that should not be in the legislation.

Mr Charlton: Certainly, if OPSEU and the government come to an agreement at some point and part of the agreement is that this kind of guarantee no longer need exist, the government can come back to the House for an amendment to the legislation to remove it. You are arguing against the argument your colleague made when we dealt with section 6 now.

Mr J. B. Nixon: She is the expert.

Mr Charlton: Well, she should have spoken up against you then.

The point here is that there is no guarantee with the way this is set up now. You can change it tomorrow. Put it in the legislation until such time as there is an agreement between the government and OPSEU; then we will be happy to entertain an amendment to the legislation in the House.

Ms Hošek: May I respond to that? There was a commitment made to the members that it would not be necessary to amend the act in order to change the governance structure, and that is the reason that that is sitting in the schedule rather than the act.

Let me say that it seems to me to be entirely unrealistic, in fact in the realm of fantasy, to even imagine that the government of Ontario, when it has its responsibility to its public sector pensioners, would renege on paying them their pensions. That is simply not within the realm of reasonableness.

Mr Morin-Strom: I think the fact is that there is no realistic intent in this bill to ever move towards the other two options. This government has not entered any kind of process of consultation or discussion. It is illegal currently, under the collective bargaining act, for the government to start negotiations with the union on a pension plan, and there have been no substantive discussions by the government with respect to the other two options. So in fact there is no indication whatsoever, and certainly the kind of language that is included in this act shows that the

government has no intention whatsoever of going to the other two options.

The government plan is to impose its own pension plan and give the government the right to arbitrarily make changes to that pension plan, and that is what schedule 1 is all about. We feel there are certain aspects to schedule 1 that should have to come back to the Legislature to be changed and not be able to be changed arbitrarily by the cabinet.

Ms Hošek: Obviously, I fundamentally disagree with the member's notion of what this plan is about. We have been very explicit about what the goals of this legislation are. I simply do not want to leave uncontested the member's suggestion that the government is not prepared to negotiate. I think you must make a distinction—and I hope that you will in the future—between OPSEU's wish to negotiate pension benefits and the large number of meetings that have taken place between the government and representatives of the union on the whole question of how the governance of this pension plan will be done. There have been large numbers of meetings and lots of paper exchanged on this entire question of how this plan will be run, and that has been negotiated.

We have not yet come to a conclusion that makes everyone happy. I hope that we do. In the meantime, we are not prepared as a government to increase the liability of the pension fund. That is why this legislation, and that is why the legislation is as open about the questions of governance and it is structured to be open enough to allow the results of a positive agreement to be embodied in regulation quickly.

The Chair: Mr Morin-Strom, a recorded vote?

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Furlong, Hošek, LeBourdais, Nixon, J. B., Sola.

Ayes 2; nays 5.

Section 8:

The Chair: Mr Morin-Strom moves that the following definitions be struck out of section 8:

The definitions of 'actuarial gain,' 'actuarial loss,' 'going concern assets,' 'going concern liabilities,' 'going concern unfunded actuarial

liability,' 'going concern valuation,' 'past service unfunded actuarial liability,' 'solvency assets,' 'solvency deficiency,' 'solvency gain' and 'solvency liabilities' in subsection 8(1) of the bill.

Mr Morin-Strom also moves that subsections 8(2), 8(3) and 8(4) of the bill be struck out.

The Chair: Can we deal with subsection 8(1) first?

Ms Hošek: I was quite puzzled when I looked at this suggestion of the New Democratic Party. Let me explain why we have not done that and why I would urge the members to vote against that amendment.

Without a definition of those terms as it is done in this legislation, there is no method of determining what the unfunded liability is that needs to be paid by the government, except the unfunded liability as defined by the Pension Benefits Act minimums. That would not let us take future benefits into account. In other words, there would be no analysis, as we currently have, of what the unfunded liability of the plan is, both for the past and for the future.

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The PBA references do not mention future contribution benefits and so there would be no guidance to the actuary to ensure that the funding of future benefits would actually be taken into account. What we have now is something that permits us to have level funding, which is a method that was determined to be preferable as compared to having contribution rates move and perhaps move quite significantly every three years. This is meant to make the funding pattern more regular and orderly and is the reason for these definitions in the act. I think that getting rid of them would lead to an unclear sense of what the future liabilities of the pension plan are.

The Chair: Mr Morin-Strom, do you want to explain that, please?

Mr Morin-Strom: Yes, I think perhaps I should give some explanation as to why these definitions should be eliminated from the bill. These definitions are fundamentally the reason why this bill has received such severe criticism from the actuarial profession in Ontario.

These definitions are an attempt by the government to replace accepted actuarial practice by government definitions as to how actuaries are to interpret various terms that are part of the practice. In particular, they provide exemptions from the requirements of the Pension Benefits Act, which mandate the actuarial practices in the assessment and review of pension

plans. We could go over again the serious presentation that was made to the committee by Peter Hirst, the president of the Canadian Institute of Actuaries.

Mr J. B. Nixon: A point of order: Peter Hirst did not appear before this committee to make a presentation.

Mr Morin-Strom: I do not think that is a point of order.

Clerk of the Committee: The statements were once read into the record, but Mr Nixon is correct: He was not here.

Mr Morin-Strom: He was not here, but the statement was read into the record. Certainly, we have the documentation of the serious concerns that Mr Hirst raised with respect to definitions in this act. I would just point out that there were quite specific complaints about the definitions in his paper. For example, in his point 2.1, he says that, "In subsection 8(1) of the act,"—which is the section we are talking about—"the definitions of 'going concern assets' and 'going concern liabilities' suggest that a unit credit method of funding would not be possible. It is hard to understand why this should be the case when the most common method used by actuaries in Canada for determining funding rates is the unit credit method."

He goes on with further criticisms of definitions of going concern valuation in subsection 8(1). In point 2.3, he says, "The method proposed under the act is in accordance with generally accepted actuarial principles, but is it in accordance with generally accepted practices? The standards of practice of the Canadian Institute of Actuaries relating to the valuation of pension plans require an actuary to 'explain to the plan sponsor the effect of the selected funding method(s) on the security of benefits and the stability and level of future contribution rates. The actuary should, in appropriate circumstances, explain the possible consequence of deficient or excessive funding.'"

His criticism continues with respect to the imposition that this act is making on the actuarial profession, both with respect to what are standard practices and accepted definitions of these terms and with respect to the Pension Benefits Act and the kinds of statements with respect to pension plans that actuaries are going to have to prepare for other plans. These definitions being imposed on that profession are going to result in the distortion of actuarial reports that are given on this plan, will not reflect what is common practice and will not reflect the requirements of the Pension Benefits Act.

In our view, we should leave it up to the actuaries to determine what is the best standard practice. Let them make, under their profession—they are the professionals—what they feel is the best judgement as to the status of this pension plan in the future so that we get arm's-length statements on the status, the solvency and the future of the pension plan, not distorted statements based on arbitrary definitions concocted by this government.

Ms Hošek: I find it astonishing that the member opposite would describe the method of funding, which is one of the two standard ways of funding pension plans, as arbitrary and made up by the government. The government does not make up actuarial rules. The method that was chosen was chosen because it has lower contribution rates in the long run. It makes benefits more securely funded than the Pension Benefits Act proposes.

I am glad to be given the opportunity to correct the impression created here the day when we had representations from OPSEU. Just because this description of actuarial terms is in the act, that does not preclude future actuarial valuations that will take place at the point at which there is an arm's-length board to manage this pension plan. This does not preclude them from choosing the unit credit method down the road if they choose to do so. Nothing ties the hands of the future actuaries who will be hired by this board in this act.

Mr Morin-Strom: There has to be a response to that point with respect to the possibility of another plan imposed. This is not in the schedule; these definitions are in the part of the bill that cannot be changed. A future plan, if the government ever achieves one with respect to a jointly operated plan or a plan operated by the plan members, will have to live with these actuarial definitions, which are being imposed in the part of the act that cannot be changed to accommodate another plan. We have the case where the government wants to impose definitions regardless of whether any supposed negotiations ever happen with plan members and some other plan comes into place.

Ms Hošek: This set of definitions applies to the initial valuation that sets up the arm's-length board and the arm's-length fund. After this initial valuation, the board will be free to hire the actuaries it decides to hire. It can give them a different direction on how to do this if it chooses to do so.

Mr Charlton: You cannot not put something into the legislation and then hope that that will be

true, because it will not be. It does not say that here anywhere.

The committee divided on Mr Morin-Strom's motion, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Furlong, Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 6.

Ms Hošek: This is a government amendment on subsection 8(1), the section on solvency assets.

The Chair: Ms Hošek moves that the definition of "solvency assets" be amended by striking out the words "established before 1 January 1988" at the end thereof.

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Ms Hošek: That is at the top of page 8, in fact.

The Chair: So the explanation was that this is strictly a technical amendment.

Ms Hošek: A technical amendment having to deal with correcting the definition of "solvency assets." It makes it consistent with the way that definition appears in the Pension Benefits Act.

Motion agreed to.

The Chair: Mr Morin-Strom moves that subsections 8(2), (3) and (4) of the bill be struck out.

Clerk of the Committee: There is no need for an amendment. You simply vote against the section and if you win it will be struck out.

The Chair: Okay, I will take that back. Shall subsection 8(2) carry? Do you want a recorded vote? Okay. All those in favour? Opposed? Subsection 8(2) carries. Shall subsection 8(3) carry? All those in favour? Same vote? Okay. Shall subsection 8(4) carry? Same vote. Subsection 8(4) carries.

Section 8, as amended, agreed to.

Section 9 agreed to.

Section 10:

The Chair: Shall subsection 10(1) carry? Agreed. Shall clause 10(2)(a) carry? Carried? Okay. We are into clause 10(2)(b) and I will deal with Mr Morin-Strom's amendment first.

Mr Morin-Strom moves that clause 10(2)(b) of the bill be struck out and the following substituted therefor:

"(b) be filed by the board with the Pension Commission of Ontario; and."

Mr Morin-Strom: This is one that really puts the lie to the government's claim that this board is going to act at arm's length to the government. This is mandating that the actuary deliver the financial statement on the pension plan to the board and to the minister and to the Treasurer and it shall be filed with the Pension Commission of Ontario by the board only after the minister and the Treasurer have approved in writing the initial valuation. This clause basically says that the minister and the Treasurer have the power to interfere with the independence of the actuary and the board with respect to the financial assessment of the pension plan.

We find it totally unacceptable that the government would be insisting on the right of veto, of being able to tell the board, "No, that actuarial statement doesn't satisfy us." This gives the government the right to say: "No, you haven't shown a big enough surplus this year. We want to be able to exempt ourselves from making a payment this year. You come back to us with a financial statement which shows a better financial position for the board."

This allows the Treasurer and the minister to interfere completely with the arm's-length relationship of the actuary and the board in the fair and independent financial assessment of the pension plan and then the passing on of that assessment to the Pension Commission of Ontario.

The Chair: I am assuming that the government amendment does not satisfy your needs in that regard.

Mr Morin-Strom: I have not looked at the government amendment. It has not been moved.

Ms Hošek: I would like also to speak against this one. The ministers' signatures are necessary in some form because of the magnitude of funds it involves. It would not be fiscally responsible for the government to pay the initial deficit, which is what this refers to, without approving the valuation in the first place.

The board's responsibility will be to the fund. The government's responsibility is both to the fund and to the taxpayers and plan members. This is intended to ensure that both are satisfied.

Our motion, which I know I have to speak to after this one, tries to deal with this question of arm's length in a somewhat different way from what is in the bill right now, but the basic principle is that at some point there has to be some recognition on the part of the government for the shape of that deficit because of the

responsibility the government has to pay off that deficit.

The committee divided on Mr Morin-Strom's amendment, which was negated on the following vote:

Ayes

Charlton, McLean, Morin-Strom.

Nays

Furlong, Hošek, Oddie Munro, Nixon, J. B., Sola.

Ayes, 3; nays 5.

The Chair: We have another proposed amendment to clause 10(2)(b).

Ms Hošek: This is our government amendment on clause 10(2)(b).

The Chair: Ms Hošek moves that clause 10(2)(b) of the bill be amended by striking out the words "approved in writing the initial valuation" in the fifth line and inserting in lieu thereof "advised the board in writing that they agree that the initial valuation delivered to them be filed."

Ms Hošek: What this provides for is that the minister and the Treasurer have to review the initial valuation before it has been filed and to advise the board that they agree that it should be filed, but it eliminates the requirement for written approval from the Treasurer and the minister. This is our wish to make it clearer that the valuation will come from the board but that the minister and Treasurer will have to indicate that they have received it and send it forward.

Mr Morin-Strom: This motion is just a copout. It gives the Treasurer and the minister arbitrary and total control still to veto, because they do not have to give this statement back, and at the same time it allows them to say, "Well, we never approved of it." They do not have to take responsibility for it. They want to have the right to be able to veto and send back to the pension commission a statement which they do not find to their liking, but at the same time they just do not want to have to take any responsibility. It is just an abdication of responsibilities.

The Chair: Recorded vote, I am assuming.

Mr J. B. Nixon: Why not?

The committee divided on Ms Hošek's amendment, which was agreed to on the following vote:

Ayes

Furlong, Hošek, McLean, Oddie Munro, Nixon, J. B., Sola.

Nays

Charlton, Morin-Strom.

Ayes 6; nays 2.

The Chair: Shall subsection 10(2)(c) carry? Agreed. Subsection 10(3)? Agreed. Subsection 10(4)? Agreed. Subsection 10(5)? Agreed. Subsection 10(6)? Agreed. Subsection 10(7)? Subsection 10(8)? Agreed.

Section 10, as amended, agreed to.

Section 11:

The Chair: Shall subsection 11(1), as proposed, carry? Okay. On subsection 11(2) we have a proposed amendment.

Mr Morin-Strom moves that subsection 11(2) of the bill be struck out.

Would you like a recorded vote on subsection 11(2)?

Mr Morin-Strom: Eventually, but we are going to have a debate on it first.

The Chair: Okay.

Mr Charlton: That is why sometimes the motion gets moved, as opposed to just voting against the section, so that we can discuss the intent.

The Chair: I understand. Explanations.

Clerk of the Committee: You can still discuss any section of the bill you wish.

The Chair: That is correct.

Mr Morin-Strom: This is one of the most disgusting parts of this whole bill, because it is the one which establishes the government's principle that it believes that surpluses belong to the government, not to the employees, the members of the plan. This is a principle which affects not only this bill and this pension plan but all pension plans and shows where the government really stands.

This government is saying that surpluses can be applied to cover the government's payments on that unfunded liability that the government claims it is going to pay on this plan. In our view, the government's taking of unfunded liability is totally inappropriate and this type of clause in this bill is totally unacceptable.

Ms Hošek: Let me point out to the member that in subsection 6(4) it is made clear that this section would not apply if the plan were to be jointly run or if it were run by members by themselves. At the moment, and under these circumstances, we are assuming government sponsorship and therefore the decision about the applications of the gains is up to the government.

It would be different if there were a partnership or a member-run plan.

Let me also remind the member that the rules of the Pension Benefits Act are extremely clear about what can and cannot happen to surpluses and this bill is also very clear about that. I reject completely the notion that this is some attempt by the government to take the surpluses away from the plan.

Mr Charlton: Just so the record is clear on this, we find this section offensive and disgusting regardless of who the sponsor of the plan is or whether or not there is ever any agreement with the Ontario Public Service Employees Union for a joint partnership.

This is a contributory plan in which the employees are investing dollars, and to have a section under anybody's pension plan that provides the surplus to the employer is, in our view, inappropriate and, as my colleague said, disgusting.

Mr McLean: When you have subsection 6(5), why do you need to? Does subsection 6(5) not cover that? It is on page 4, the second paragraph.

The Chair: What was the question again?

Mr McLean: Does this not cover exactly what you are talking about here in subsection 11(2)?

Ms Hošek: Subsection 6(5) covers what will happen if the plan is jointly run. This covers what will happen if the plan is government-run.

The Chair: Okay. On the proposed amendment to subsection 11(2), I am assuming a recorded vote.

Mr Morin-Strom: On the whole section?

The Chair: No, on the proposed amendment.

Clerk of the Committee: All they have to do is vote against.

The Chair: Good point. All those in favour of subsection 11(2)?

Interjection: As amended?

The Chair: No.

Clerk of the Committee: There is no amendment. If you wish the section to be in the bill, you will have to vote for it. If you wish it not to be in the bill, you vote against it.

The Chair: Before we hear that, I have been advised by Mr Charlton that that is why it is a motion.

Mr Furlong: I would like some clarification. It is my understanding that if there is a motion, the motion has to be voted on. Is that not the case?

Clerk of the Committee: The procedure in our Legislature is that there is no need for a motion to remove a section, you just need a simple vote for or against it.

Mr Charlton: So the motion is not out of order.

The Chair: All those in favour of section 11(2) as proposed in the bill?

The committee divided on whether subsection 11(2) should stand as part of the bill, which was agreed to on the following vote:

Ayes

Furlong, Hošek, LeBourdais, Oddie Munro, Nixon, J. B., Sola.

Nays

Charlton, McLean, Morin-Strom.

Ayes 6; nays 3.

The Chair: Shall subsection 11(3) carry? Agreed, and subsection 11(4) agreed to. On subsection 11(5), I will take the government motion this time to start off with and then deal with Mr Morin-Strom's motion.

Ms Hošek moves that subsection 11(5) of the bill be amended by striking out the phrase "unless the valuation has been approved in writing by the minister" in the third and fourth lines and inserting in lieu thereof the phrase "until the minister has advised the board in writing that he or she agrees that the valuation be filed."

Ms Hošek: This is exactly the same reasoning as we used a little bit earlier in this whole question of the actuarial valuation and its relationship to the minister and the Treasurer. It provides for the minister to review the valuations before they are filed and to advise the board that he or she agrees that it should be filed, but it eliminates the requirement for written approval.

The Chair: Any comment?

Mr Morin-Strom: Well, I think it is copout again. The government—

The Chair: Thank you. Shall the amendment to subsection 11(5) carry?

Mr Charlton: No.

The Chair: Recorded vote?

Interjection: Sure.

The Chair: To the amendment?

Clerk of the Committee: Ms Hošek, Mr Sola, Ms Oddie Munro, Mrs LeBourdais, Mr Furlong, Mr Nixon.

The Chair: Opposed?

Clerk of the Committee: Mr Charlton, Mr Morin-Strom, Mr McLean. The amendment carries, six to three.

The Chair: Okay, shall section 11, as amended, carry? Carried.

Mr Morin-Strom: No, whoa.

The Chair: Whoa, whoa what?

Mr Morin-Strom: Wait. We had a motion here that it be struck out. That means I want to have a debate on the section as a whole.

The Chair: Oh, okay. On subsection 11(5), Mr Morin-Strom.

Mr Morin-Strom: In our view, again, this section allows for the minister to interfere with the actuaries and the board in the valuation of the pension plan. We feel it is totally inappropriate that the minister should have this right to interfere with the professionals in the practice who have to do the valuation and with the board which is responsible for managing the plan. The government claims it is establishing an arm's-length relationship, but then in clauses like this it proves that in fact there is no arm's-length relationship. The government wants to maintain for itself and for the minister the right to veto an evaluation of the plan conducted by the board and professional actuaries. We find that totally inappropriate in an operation that is supposed to be at arm's length.

Mr McLean: I find through this legislation, as I have with many others, that the minister has all the power that anybody could get. I find that offensive due to the fact that when we look at this legislation, in pension legislation we should be looking at some input and some say on behalf of the workers who are involved in the plan and I do not see where the workers have any say in how their plan is to be invested. The board and the minister have all the say and the ordinary person who pays into the plan is not going to be part of it.

The committee divided on Ms Hošek's amendment, which was agreed to on the following vote:

Ayes

Furlong, Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Nays

Charlton, McLean, Morin-Strom.

Ayes 6; nays 3.

Section 11, as amended, agreed to.

1130

Section 12:

The Chair: Mr Morin-Strom moves that section 12 of the bill be amended by adding thereto the following subsection:

“(2) Subsection (1) does not apply with respect to the indexation for inflation of an allowance, annuity, deferred annuity or other payment which a person began to receive before the 1st day of January, 1976.”

Mr Morin-Strom: My understanding of this section is that this is where the pension indexing that was given by the government for employees who retired before 1 January 1976 was guaranteed by the government and was guaranteed to be paid out of the consolidated revenue fund.

The requirement that the pension plan, and in particular current pensioners and dempoyees, should be burdened with the cost of the indexing of pensioners who retired before January 1976 is inconsistent with the principle that had been established at the time that the indexing provisions for the public service plan under the Superannuation Adjustment Benefits Act were established.

We feel that the burden of the cost of the indexing of the pensioners before 1976 should continue to be assumed by the government, which assumed that at the time the act was passed. The government at that time agreed that even though those pensioners had never paid into the superannuation adjustment fund, they should have the right to the indexing. It was agreed that current employees and continuing employees should not be burdened and that their plan should not be burdened with the costs of that arbitrary decision to give past pensioners an indexing formula.

The government accepted that at that time. I think it is inappropriate that the government should now be passing that obligation from itself on to the existing pension plan. This is the part of the act that is accomplishing that: adding an additional cost burden to pensioners.

We are asking current pensioners to pay an extra one per cent, in effect, to pay for an action which was appropriate at that time. But those employees before 1976 did not put funds into the plan. The government made that commitment, at the time of its move towards indexing, that they would be covered out of the consolidated revenue fund, and that, we feel, should continue to happen.

Ms Hošek: I think this motion comes out of some lack of clarity on what it is this act is trying to do. The government has made its commitment that it will, of course, make sure that the indexation benefits of those people who were

there before 1976 are guaranteed. That is part of the initial unfunded liability of the plan. The government has agreed that it will pay that initial unfunded liability. The agreed-upon one per cent beyond that has to do with future benefits, not past benefits. What has happened is that the consolidated revenue fund responsibilities that the member describes have been moved into the fund, and the government is bearing the cost of that through the 40-year payments of the unfunded liability. So the characterization that has been given by the member is simply incorrect.

Mr Morin-Strom: In fact, the government is not assuming that burden. The government is allowing itself to take surpluses that are going to be generated from the increased payments it is demanding from employees, current employees who have to pay an extra one per cent in order to balance the plan's operation, including the balancing of all previous liabilities as well.

In fact, the government is going to be able to exempt itself from ever having to make those payments. There is no commitment in this plan to make this 40-year payment. The expectation of the plan is that those surpluses will pay for the cost of those pre-1976 retirees. Previously, it was totally the government's responsibility; now the likelihood is that much of it will be paid through current employees' contributions to the plan and the surpluses that may be generated as a result of that.

In the meantime, employees will not be able to get improved benefits because those funds will go to paying off this past liability of the government rather than the right to improve benefits.

The Chair: Just pass section 11.

Mr J. B. Nixon: I have a quick question for the parliamentary assistant or her staff. Do we have available the information as to how much money the government is putting into this pension fund, last year and this year?

Ms Hošek: Yes, we do. I can ask the staff to give the exact numbers if you will wait just a moment.

The Chair: While you are finding that, could you go through this?

Ms Hošek: I simply want to remind the member of two things which I know he will say are not the case, but they happen to be the case.

The one per cent increase, both on the part of the government and on the part of employees, is for future benefits only. Because of the rules of the Pension Benefits Act, no one will be allowed

to have spent more than 50 per cent out of their disbursements for the pension they receive.

In other words, the rules of the Pension Benefits Act, which this also complies with, are that anybody's pension will have to have been paid for, ultimately, half by his employer and half by himself; that is a guarantee in the Pension Benefits Act. So the comments that were made by the member opposite are simply incorrect.

The Chair: Do we have the figures?

Ms Clark: To clarify, did you mean 1988?

The Chair: Fiscal year 1988-89 and fiscal year 1989-90.

Ms Clark: For 1988-89 the number is the sum of \$165 million, \$176 million and \$58 million.

The Chair: Round it off to the nearest million.

Mr J. B. Nixon: Roughly \$400 million.

Mr McLean: How much was paid out, though?

Ms Clark: How much in terms of benefits was paid out of the plan?

The Chair: For the same period?

Mr McLean: Yes.

Ms Clark: That will take us just a few minutes to find, and then I can address that.

The Chair: Okay. Can we get back to that? Is that possible? Can we get back to that when they let us know what the answer is? Thank you.

Shall the amendment to section 12 carry?

Clerk of the Committee: A recorded vote.

The committee divided on Mr. Morin-Strom's motion, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Furlong, Hošek, LeBourdais, McLean, Nixon, Sola.

Ayes 2; nays 6.

Section 12 agreed to.

Section 13 agreed to.

Section 14:

The Chair: Ms Hošek moves that subsection 14(2) of the bill be amended by inserting after the word "person" in the first line the phrase "mentioned in subsection (1)."

Ms Hošek: This is a technical amendment, simply to clarify that in subsection 14(2), when we refer to "person," we are referring to the same person as described in subsection 14(1).

Motion agreed to.

Section 14, as amended, agreed to.

Section 15 agreed to.

1140

Section 16:

Ms Hošek: I move that section 16 of the bill be struck out and the following be Substituted therefor:

"(1) A contributor as defined in the Public Service Superannuation Act who,

"(a) is being paid an allowance or annuity under that act;

"(b) has no spouse entitled to a survivor allowance under section 20 of that act; and

"(c) becomes the spouse of a person who would not be entitled on the death of the contributor to a survivor allowance under section 20 of that act,

"may in writing direct the board to pay to the person, if he or she survives the death of the contributor, a survivor allowance under section 20 of that act for life of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance or annuity received by the contributor immediately before his or her death.

"(2) A direction mentioned in subsection (1) must be delivered to the board,

"(a) within 90 days after the date on which the contributor became the spouse of the person to whom the survivor allowance is directed to be paid; or

"(b) if immediately before the person becomes the spouse of the contributor there is a child of the contributor who would be entitled on the contributor's death to receive an allowance under the Public Service Superannuation Act, within 90 days after the date the child ceases to be entitled to receive the allowance;

"(c) 30 June 1990; or

"(d) the last day of the sixth month following the month in which this act receives royal assent."

I understand that is a mouthful, but it is really quite a simple provision. What it does—

The Chair: That is just page 1 of three pages.

Ms Hošek: Oh God, do I have to read all of them?

The Chair: So it's going to be a larger mouthful.

Ms Hošek: Oh, my. All right. I will keep going.

There is an exception.

"(3) The board may accept a direction delivered after the time mentioned in subsection

(2) if the board is satisfied that the contributor is in good health, having regard to his or her age.

"(4) The annuity or allowance payable to a contributor who has given a direction in accordance with this section shall be actuarially reduced in a manner approved by the board to reflect the survivor allowance directed to be paid and, subject to subsection (5), and to section 20 of the Public Service Superannuation Act, the survivor allowance shall be paid in the percentage specified in the direction to the spouse if he or she survives the death of the contributor.

"(5) A survivor allowance under this section shall not be paid while there is a child of the deceased contributor entitled to receive an allowance as a result of the death of the contributor.

"(6) If a contributor who is in receipt of an allowance or annuity dies survived by a child or children under 18 years of age or by a spouse from whom the contributor is not living separate and apart, and if none of them is entitled to a survivor allowance under section 20 of the Public Service Superannuation Act, this section or that act as a result of the death of the contributor, the amount, if any, by which twice the total of contributions made under the Public Service Superannuation Act to the public service superannuation fund by or on behalf of the contributor and of the interest credited in that fund to the contributor exceeds the total payments made from the fund and the public service superannuation fund to the contributor shall be paid from the fund to the surviving spouse, or if there is no surviving spouse, to the child or children, if any, of the contributor under 18 years of age at the contributor's death.

"(1) The following are—"

Mr Morin-Strom: I believe that is another section.

Ms Hošek: No.

The Chair: Okay; it's an explanation of the amendment.

Ms Hošek: Of that mouthful. Basically, the explanation says that, in the law as proposed here, if someone retires after this law comes into effect, that person has the right to give post-retirement benefits to someone he or she might marry after retirement. What this does is say that even people who are permanently retired have an option of survivor benefits if they marry after retirement; so it simply extends one of the benefits that is in this act, that was not in the original wording, to people who are currently retired. So it is an extension of benefits and opportunity.

Mr Morin-Strom: I have some questions. Why is it in this section? My understanding is that there are similar clauses in the schedule to this one. Why in this case have you put it in the main part of the bill and not in the schedule? I cannot recall what section they are, but it seems to me there are some other quite similar ones in terms of spousal benefits.

Ms Hošek: If you could look at section 16, some of which I have not yet finished talking about, this whole section deals with the old act and the relationship between this act and the old act. This is a way of dealing with the relationship between this act and the old act on the question of post-retirement survivor benefits for people who marry after retiring. All the relationships having to do with the old act are gathered together in section 16, and a variety of things are repealed by this act because of the override of this act.

The Chair: And you want to put this benefit in before you repeal the old acts.

Mr Morin-Strom: Can we just ask—I cannot find it right off the bat—

Mr McLean: Page 29.

Mr Morin-Strom: —where the similar clauses are in the other—what page?

The Chair: Page 29. Section 21 of the schedule.

Mr Morin-Strom: Perhaps it is more analogous to section 21, which is post-retirement marriages.

Ms Hošek: That is it.

Mr Morin-Strom: Are you then going to delete section 21 of the—

The Chair: There is an amendment that is going to be coming.

Ms Hošek: There is an amendment to regularize the relationship between the two, but what we are saying is that in the new schedule anyone who retires and then marries after retirement is entitled to select for a survivor benefit for the spouse whom he marries after he has retired. At the moment, people who are already retired do not have that right and have not been given it by our original wording, so what we are doing is saying that we are going to give them that right in relation to the old act. Then they will carry it forward into the new.

Mr McLean: This section that says the board shall accept a direction delivered after the same time mentioned in subsection 20(1) if the board is satisfied that the contributor is in good health. Do you mean to say now that the board is going to determine whether the person is in good health

and whether he or she should receive benefits? Could I have an explanation on it?

Ms Hošek: I think I am going to ask one of the technical folks to answer that one.

Ms Clark: I am Phyllis Clark from the Human Resources Secretariat. Yes, that would be a requirement. These are for post-retirement marriages only. This section deals with post-retirement marriages, so these are people who have retired. It is only after six months. There is a six-month window for people who are currently retired to take advantage of this. So after those people have taken advantage of it, in the future, anybody who is already retired and marries would have to prove that he or she was in good health before taking advantage of this. In the private sector this kind of benefit is seldom extended. Generally, when people have left the plan, the plan does not extend the option to those people.

Ms Hošek: Generally, the plan does not say to someone after he has retired, "Let's change the rules for you to make it more open for you if you marry after retirement to give survivor benefits to your spouse."

Mr Charlton: To put the question another way, in most pension plans, at the time you are retiring you have to choose your options.

Ms Hošek: That is right.

Mr Sola: Is there any protection in this amendment here against an abuse of this provision? I am thinking about marriages of convenience, say, with immigrants who want to remain in this country and marry a Canadian in order to give them easier entry even if they are shipped back to their country of origin. I am thinking here that we could have a situation of December-January marriages where there is a 50-year gap in the ages of the spouses, where younger people may be taking advantages of family friends or something in order to feather their nest, so to speak, financially. Is there anything in this to prevent something like this occurring?

1150

Ms Hošek: That is exactly the reason this good-health provision is in there, because we want to make sure that does not happen in quite that way, but it is rather difficult. There is an actuarial reduction. In other words, anyone who elects to have his or her spouse be a survivor has to take a reduction in the original benefit. It is a pretty significant commitment to make and one is assuming that people will make it based on the

analysis of what the odds are and what is the most appropriate way to do it.

Mr McLean: Could I have some clarification? If there is a person who worked for the civil service for approximately 30 years and that person married somebody 30 years younger, when the employee died, what percentage would that spouse get, who would be 30 years younger, and for how many years?

Ms Hošek: For the rest of her life, and I believe it is 50 per cent. It would be 50 per cent without the cost of it and 60 per cent with. So it is a proportion of the pension, but if you are assuming that the worker was male and the person who would be the surviving spouse was female, then the person who would arrange to give this to the survivor would also take a smaller pension. That is the point about the actuarial cost.

Mr McLean: If it was vice versa, what would it be?

Ms Hošek: In order for your spouse to get a pension after you die, you have to agree as a person to take a lesser pension while you are alive, and that is the tradeoff that families have to make.

Mr McLean: If the younger spouse was a male, would they qualify under this?

Ms Hošek: It is exactly the same. I am simply giving the sort of standard example. The standard example would still mean that anyone who retired would have to be prepared to take a lower pension in order for the spouse to have a pension after he or she died.

The Chair: Mr Sola, does that answer your question?

Mr Sola: It answered partially, but I am thinking of cases where there is a marriage, and then once you become a beneficiary, there is a divorce. Has that been taken into account? Because you could have sort of an avalanche of this sort of thing happening and whatever we are doing to remove the actuarial deficit may be enhanced by this sort of manoeuvre.

Ms Hošek: I think the only answer is the one that I have given, and that is, in order for someone to elect to have the spouse who is 60 years younger get the pension, he or she would have to be prepared to get a smaller pension while he or she was alive. So I think the cost-benefit analysis is such that we are not likely to get a great deal of this kind of abuse, but it seems to me that the whole provision for post-retirement marriages makes a lot of sense. People do, after a long period of time, in fact, find themselves

married again in their later years, and I think we should be able to allow them to make that choice.

The Chair: Are we ready for the question on the new section 16 as proposed? Shall it carry?

Motion agreed to.

Mr Morin-Strom: Point of order. I believe that at 11:55 we have votes going on. I would move that we adjourn until this afternoon.

The Chair: Okay.

The committee recessed at 11:53.

AFTERNOON SITTING

The committee resumed at 1530 in room 228.

The Chair: I am going to see a quorum. I had a discussion with Mr McLean and he is apparently going to be speaking in the House some time this afternoon. We have his permission to proceed in his absence. When we adjourned this morning, the parliamentary assistant was about to introduce section 16a.

Ms Hošek: This section repeals a variety of parts of previous statutes.

The Chair: Ms Hošek moves,

"16a(1) The following are repealed on the 1st day of January, 1990:

"1. The Public Service Superannuation Act, being chapter 419 of the Revised Statutes of Ontario, 1980, excluding subsection 20(7).

"2. Item 13 of the schedule to the Revised Statutes Amendment Act, 1981, being chapter 66.

"3. The Public Service Superannuation Amendment Act, 1983, being chapter 44.

"4. Section 3 of the Provincial Judges and Masters Statute Law Amendment Act, 1983, being chapter 78.

"5. The Public Service Superannuation Amendment Act, 1984, being chapter 22.

"6. Section 74 of the Family Law Act, 1986, being chapter 4.

"7. The Public Service Superannuation Amendment Act, 1986, being chapter 12.

"8. Section 60 of the Equality Rights Statute Law Amendment Act, 1986, being chapter 64.

"(2) Subsection 20(7) of the Public Service Superannuation Act is repealed on the 31st day of December, 1989."

Ms Hošek: The explanation for all of these is that they are no longer in effect because they have now been superseded by the wording in the current act that we are working our way through right now.

Section 16a agreed to.

Mr Morin-Strom: I would like to reopen a section.

The Chair: We have sections 17 and 18 before we get on to the schedule.

Mr Morin-Strom: That is fine.

Sections 17 and 18 agreed to.

Mr Morin-Strom: I would like to reopen subsection 10(8), primarily for the purpose of getting a recorded vote on it. My motion would have been that subsection 10(8) be struck out.

Ms Hošek: Is this the projected future earnings section?

Mr Morin-Strom: No, page 10, subsection 10(8), the consistent assumptions section. We passed section 10 and I am asking the committee to reopen subsection 10(8).

The Chair: For a recorded vote?

Mr Morin-Strom: Yes, because I would have liked to have moved that it be struck out.

Ms Hošek: Are we talking about clauses (a), (b) and (c) all at once?

Mr. Morin-Strom: Yes.

1530

Mr J. B. Nixon: I think we need unanimous consent to reopen.

The Chair: Yes. Can we get unanimous consent to do that, just for a recorded vote? I do not see anybody objecting violently, so we will have a recorded vote on clauses 10(8)(a), (b) and (c).

Section 10:

Mr Morin-Strom: Speaking to it briefly, this brings up the same point that we had made previously with respect to some of the actuarial definitions that will be imposed in another section where we have amendments asking for the deletion of definitions. We have had expressions of concern from the actuarial profession that the imposing of consistent assumptions in perpetuity, at least for 40 years, puts a bind on that profession and is inappropriate in this legislation. The profession is one that changes. Even what they view as standard practices do change over time and this kind of provision, binding actuaries in terms of what is called "consistent assumptions" here for ever more, is inappropriate in this part of the bill.

The Chair: A recorded vote, then, on clauses 10(8)(a), (b) and (c). All those in favour?

Mr J. B. Nixon: In favour of what?

The Chair: Of leaving clauses 10(8)(a), (b) and (c) as they are.

Mr J. B. Nixon: Just let me say before you proceed that I find this somewhat objectionable, that I will vote again in favour of something I have already voted for.

The Chair: We appreciate that. Thank you.

The committee divided on clauses 10(8)(a), (b) and (c) standing as part of the bill, which was agreed to on the following vote:

Ayes

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Nays

Morin-Strom.

Ayes 5; nays 1.

Mr J. B. Nixon: Let the record show that the vote did not alter.

The Chair: Can we move now to schedule 1 on page 14.

Schedule 1:

The Chair: Mr Morin-Strom moves that section 1 of schedule 1 to the bill be amended by adding thereto the following definition:

“‘Bargaining agents’ means the unions that represent members of the plan.”

Mr Morin-Strom: I think we should have a definition of what “bargaining agents” means in the plan, in particular because I have some other motions which refer to bargaining agents later on.

Ms Hošek: We believe this is unnecessary because the Labour Relations Act makes it very clear that “bargaining agent” means the union representative. Beyond that, that will not cover the Ontario Provincial Police Association since it is not a union and it will not cover the management employees. Those two groups are also covered by this act.

The Chair: What are we saying then?

Ms Hošek: What we are saying is that I would reject that amendment.

Mr Morin-Strom: That is fine. She can reject it if she wants. I think we should have a clarification of who bargaining agents are.

The Chair: A recorded vote?

Mr Morin-Strom: Yes.

1540

The committee divided on Mr Morin-Strom’s amendment, which was negated on the following vote:

Ayes

Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 1; nays 5.

The Chair: We have a government motion.

Ms Hošek moves that the definition of “employer” in section 1 of schedule 1 to the bill

be struck out and the following substituted therefor:

“‘Employer’ means

“(a) the crown;

“(b) an agency, board, commission, foundation or organization designated by order of the Lieutenant Governor in Council as an employer for the purposes of the plan,

“(c) the Provincial Auditor, and

“(d) the employer of persons required by any act of the Legislature to be members of this plan or the pension plan established by the Public Service Superannuation Act or a predecessor act.”

Ms Hošek: The reason for this is that it clarifies the definition of “employer” which also covers employers who are required to participate in the plan by virtue of any other act. It also covers the Provincial Auditor. It ensures that the new definition covers all the employers who currently participate in the plan. It just makes sure that they are all in here.

Motion agreed to.

The Chair: Shall section 1 of schedule 1 carry as amended? All in favour? Opposed, if any? Carried.

I believe there is a government amendment to schedule 1, subsection 2(1), paragraph 2.

Ms Hošek moves that paragraph 2 of subsection 2(1) of schedule 1 to the bill be struck out and the following substituted therefor:

“2. A class of employees of any agency, board, commission, foundation or organization that is established under an act of the Legislature and that is designated by order of the Lieutenant Governor in Council as one whose employees in that class are required to be members of the plan.

Ms Hošek: What this does is clarify the membership eligibility for the employees of agencies, boards and commissions.

Motion agreed to.

The Chair: Ms Hošek moves that clause 2(2)(b) of schedule 1 to the bill be amended by striking out “may be” in the third line and inserting in lieu thereof “in a designated class are.”

Ms Hošek: What this does is again clarify eligibility for employees of agencies, boards and commissions.

Motion agreed to.

The Chair: Shall section 2 of schedule 1, as amended, carry? Carried. Shall section 3 carry? Carried. Shall section 4 carry? Carried. I believe we have an amendment to subsection 5(1).

Ms Hošek moves that subsection 5(1) of schedule 1 to the bill be amended by striking out "the crown" in the second line and inserting in lieu thereof "an employer."

Ms Hošek: This amendment clarifies that employer contributions are paid by all employers as defined in the act, which includes the crown, agencies, boards, commissions, foundations, organizations, the Provincial Auditor and employers as required under any act of the Legislature, again making consistent the amendments we have just passed.

Motion agreed to.

The Chair: Is there agreement that section 5, as amended, carry? Carried.

Mr Morin-Strom moves that subsection 6(1) of schedule 1 to the bill be struck out and the following substituted therefor:

"(1) Every member shall contribute to the fund from the salary paid to the member for each calendar year, the amount calculated using the formula,

"A - B

"in which,

"A' is eight per cent of the member's salary, and

"B' is the amount of the member's contributions under the Canada Pension Plan for the year."

Mr Morin-Strom: I think we should put in place a formula that more fairly reflects the eight per cent contribution level across the board to all public servants. The formula, as written, means that employees who have lower and middle incomes in fact will pay a higher percentage to their pension plans than will those at high income levels.

The explanation from the government for using the 6.2 per cent rather than the eight per cent is under the premise that the Canada pension plan payment would stay at 1.8 per cent, but my understanding is that federal legislation has the Canada pension plan payment going up, as of 1 January 1990, to more than two per cent, something like 2.2 per cent, and escalating up from there to levels well over three per cent—I cannot remember the exact figure—by the year 2000.

This formula will mean that at those levels of income, subject to the Canada pension plan, employees will be paying more than eight per cent towards their pension plan. We think the formula should be quite clearly eight per cent minus the amount of their contribution to the Canada pension plan.

Ms Hošek: I understand the concern about the way this is integrated with the Canada pension plan, but if we did what the member suggested the cost would be significantly increased and the contribution rate would have to be increased. The current contribution rate is based on integration with the Canada pension plan, which is quite a fundamental tenet of the way this has been structured all along.

The formula you are suggesting would cause a very dramatic reduction in the dollars coming into the plan and that would ultimately mean much higher contribution rates required to keep the thing going. The CPP rate in January 1990 is 2.2 per cent. It will rise to 3.8 per cent in the year 2011. Even in 1990 with the CPP at 2.2 per cent, eight per cent minus the CPP rate would not be enough. As the CPP rate rises it would be even less adequate, so you would be building into the structure of the plan a severe inadequacy and we cannot accept that.

Mr Morin-Strom: I guess the complaint here is that it would be far fairer to have a fair rate that applies across the board, rather than imposing on lower income public servants a percentage that will be more than eight per cent. In effect, you are saying that at low income levels you have to pay more than eight per cent. At higher income levels that percentage of total income will be much closer to eight per cent. Beyond a certain level, you only pay eight per cent on the balance, but for a significant portion of income of low- and middle-income earners, they will be paying, under your figures, not eight, but 8.4 per cent initially—in the longer run I think you said 3.6.

Ms Hošek: It is going to go from 2.2 per cent to 3.8 per cent.

Mr Morin-Strom: Starting next year, they pay 2.2 plus 6.2 or 8.4; then in years to come, up to the 3.8 plus 6.2 which is 10 per cent on that income and that is a very regressive way of funding this plan. I think you could have found a fairer formula.

The committee divided on Mr Morin-Strom's amendment, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 5.

The Chair: Shall section 6 carry? Carried.

1550

The Chair: Mr Morin-Strom moves that subsections 7(3) and (4) of schedule 1 to the bill be struck out and the following substituted therefor:

“(3) The board may apply all or part of an amount that is indicated by an actuarial valuation to be surplus to the requirements of the plan while it continues,

“(a) to increase the benefits of members or former members; or

“(b) to reduce the contributions to be made by members.

“(4) Upon the winding up of the plan, the board may pay to the members and former members an amount that is indicated by an actuarial valuation to be surplus to the requirements of the plan.”

Mr Morin-Strom: We find it totally unacceptable that there should be a section in this bill that allows the surplus to be used to reduce employer contributions. The concept that pension funds belong to the employer is totally alien to most workers in the province of Ontario and certainly to our party. We find it unacceptable that a surplus can be used to benefit the government, rather than the pension plan members.

Ms Hošek: We cannot accept this because the plan sponsor is the government and therefore the taxpayers pick up the deficits in this pension plan as it is currently structured. They are just about to pick up a massive deficit in the indexation fund. It is inconsistent with all the direction that we have taken in this situation.

The disposition of the surplus when the government is the sponsor is not a decision of the board. If the board would like to have that control, it can take on either a full partnership and share risks and responsibilities or it can take on running the whole thing by itself. In the absence of that, the decisions about what happens to surpluses are government decisions or sponsor decisions.

The committee divided on Mr Morin-Strom's amendment, which was negatived on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 5.

The Chair: Is there agreement that section 7 of schedule 1 should carry? Carried. Section 8? Carried. Section 9? Carried. Section 10? Carried.

We have a couple of amendments to section 11 so why do we not tackle them one part at a time.

Mr Charlton: The government amendment is a complete substitution. Presumably, if the government amendment carries, that is what we will want to be amending with our amendments.

Mr J. B. Nixon: There is a complementary section in our amendment.

Mr Charlton: That is what we are going to have to look at. We may have to change the numbers of our amendment. That is what I am saying. It is superfluous to amend something that is not going to be there in 15 minutes.

Mr J. B. Nixon: Either way, it is not going to be there in 15 minutes.

Ms Hošek: Could I make a suggestion in keeping with Mr Charlton's sense. Why do we not go through with the government amendment and then whatever is left over that the people on the other side are concerned about—

The Chair: Ms Hošek moves that section 11 of schedule 1 to the bill be struck out and the following substituted therefor:

“11(1) On such terms and conditions as are fixed by the board, a member may purchase credit in the plan,

“(a) for a period of active service during World War II or the Korean War in His or Her Majesty's naval, army or air forces, in the Canadian or British merchant marine, or in any naval, army or air force that was allied with His or Her Majesty's forces and that is designated by order of the Lieutenant Governor in Council;

“(b) for a period of service with an employer who contributed to the fund or a predecessor fund throughout the period, and for which the member has no credit in the plan and no claim for pension benefits from the plan;

“(c) for a period of employment by a person who did not contribute to the fund or a predecessor fund for the period, if the period is before the member's becoming a member and if,

“(i) during that period of service, the person provided to employees a pension plan that is or was a pension plan registered under the Income Tax Act (Canada), and

“(ii) the period, if any, for which credit in the plan referred to in subclause (i) was given to the member is reduced by the period for which credit in the plan is purchased so that credit in the plan is not given for any part of the period for which

credit is retained in the plan referred to in subclause (i);

"(d) for a leave of absence without pay for more than one month for special or educational purposes; or

"(e) for a leave of absence without pay for more than one month because of illness, pregnancy or adoption of a child.

"(2) To purchase credit referred to in clause (1)(c), a member shall pay to the fund the amount determined by the board on the recommendation of the actuary to be equal to the actuarial value of the additional expected benefits to which the member will become entitled because of obtaining the credit.

"(3) To purchase the credit referred to in clause (1)(b) or (e), a member shall pay to the fund an amount equal to the product of,

"(a) the annual salary rate of the member on the date when the member's written application containing all information required by the board for the purchase of the credit is received by the board;

"(b) the contribution rates determined under subsection 6(1); and

"(c) the length in years of the period of prior service for which credit is purchased.

"(3a) Despite subsection (3), if any payment has been made from the fund or a predecessor fund in respect of the service for which credit is being purchased under clause (1)(b), and if the total amount paid, including interest thereon at such rate as the board determines, exceeds the amount determined under subsection (3) for the purchase of that credit in the plan, the member making the purchase shall pay the higher amount.

"(4) To purchase credit referred to in clause (1)(a) or (d), a member shall pay to the fund an amount equal to the product of,

"(a) the annual salary rate of the member on the date when the member's written application containing all information required by the board for the purchase of the credit is received by the board;

"(b) twice the contribution rates determined under subsection 6(1); and

"(c) the length in years of the period of prior service for which credit is purchased.

"(5) Any credit referred to in subsection (1) may be purchased only if application therefor is made to the board in writing within 24 months after the latest of,

"(a) the day on which the member for whom credit is to be purchased became a member of the plan;

"(b) the last day of the most recent continuous period for which credit is being purchased; and

"(c) 31 December 1989."

Ms Hošek: Before I read the part on instalments, may I say that we are going to be making a change in the instalments section here. That change renders the motion that was distributed to you, the one that says, "Government motion, schedule 1, subsection 11(7)," unnecessary because we are going to be making a change in this clause.

The Chair: Ms Hošek further moves that:

"(6) If the amount payable by a member to purchase credit under this section exceeds \$500, the amount may be paid in such number of instalments of principal and interest over a period of not more than 10 years as the board permits in accordance with terms and conditions established for instalment payments and for the completion of payment on the death or retirement from employment of the member.

"(7) The employer is not required to pay to the fund an amount equal to a payment made by any person under subsection (2), (4) or section 35a."

Ms Hošek: This is a rather long amendment. The amendment is supposed to clarify that "employee" for buyback purposes it includes not only the crown but other employees participating in the plan. We are also clarifying that service with another employer for buyback purposes means service with any employer other than those participating in the plan. It also clarifies what plan members will be charged and provides increasing flexibility for plan members with previous pensionable service.

We are also trying to make it possible for a member, when he has received a previous refund from a pension fund, to get back into the public sector plan if he wishes to do so, and the previous refund could have been in the form of a cash refund or transfer of commuted value.

1600

This is what we have done in subsection 11(6): There is a technical amendment to deal with deleted subsection 11(6). The other thing that is substantive, which you may have noticed as I was reading it, is that we have replaced the five years of time for buyback with 10 years of time, because of our response to the concerns expressed here earlier that it would be difficult for some people to get the money together in that period of time. That addresses some of the concerns that have been raised here.

Let me go on with the explanation. There is also a technical amendment in subsection 11(7)

dealing with section 35a, which has replaced a previous section. My reading of this is that the substantive change here is the change from five years to 10 in the amount of time allowed to an employee to buy back his or her pensionable service from some other employer, a greater definition of what those other employers might be and who is able to do this under the plan.

The Chair: Have you had an opportunity to see if this proposed amendment addresses some or all of your amendments, Mr Morin-Strom?

Mr Morin-Strom: They have really caved in on one point to the Ontario Public Service Employees Union, I guess, on the five years moving to 10 years.

The Chair: There is hope for the government yet.

Ms Hošek: I think it is appropriate for us to have made that decision because I think it is a fairer way to proceed. I do not think we should be considered to be caving in.

The Chair: "Cave in" is such a nice term.

Mr Morin-Strom: Do I have to move my two before you pass the whole thing? Do we pass this and then I move? What do we do?

Clerk of the Committee: Pass this first and then move yours.

Mr Morin-Strom: Then I make my motions to try to change aspects of this one.

Mr Charlton: This will become the new section in front of us.

Clerk of the Committee: This is the new section.

Ms Hošek: I just moved this very long amendment.

The Chair: If we carry it, can he make amendments?

Clerk of the Committee: Yes.

The Chair: All those in favour of the proposed new section 11? Opposed, if any?

Motion agreed to.

The Chair: Okay, we are dealing now with the new section 11. Schedule 1, clause 11(3)(a): Does that still correspond to the new subsection?

Mr Morin-Strom: Yes.

The Chair: Mr Morin-Strom moves that clause 11(3)(a) of schedule 1 to the bill be struck out and the following substituted therefor:

"(a) The annual salary rate of the member,

"(i) during the period of service referred to in clause (1)(b), or

"(ii) immediately before the leave of absence referred to in clause (1)(e)."

Mr Morin-Strom: Our belief is that those who have served the province of Ontario as public servants and were unable to get pension credit for that service in the past should have the right to buy back that pension service. That service should be able to be bought back, as has been the case up to now, based upon the earnings of the member at the time to which the service refers, whether it is a service he did not buy credit for, or I think there were a couple of cases where there were leaves of absence—for example in clause 11(1)(e), for a leave of absence without pay for more than one month because of illness, pregnancy or adoption of a child. The service should be able to be bought back based on the annual salary rate of the member at the time of that service rather than what the current salary is.

Ms Hošek: I understand that the member would like to move the cost for buybacks to the historical salary, plus the interest since that time. What happens in trying to do that in administrative terms is that it can be quite a difficult thing to keep track of all the different salaries and all the different interest rates all the way back. One of the things we are trying to do is rationalize the question of costs of administration, because we are talking about many thousands of workers.

The other thing is that what we are doing is proposing current salary without interest. There will be times at which past salary plus interest may be higher than current salary without interest. The assumption that somehow this will be necessarily to the benefit of the people involved is just that, an assumption, so in trying to keep the cost of administering this thing rational we have proposed current salary.

The committee divided on Mr Morin-Strom's amendment, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 5.

The Chair: Mr Morin-Strom has another amendment. Is it pretty well the same?

Mr Morin-Strom: I think the following one is the same, and the successive one to subsection 11(5) is premised upon a historical amount and then the interest on that historical amount.

The Chair: So you will withdraw those.

Mr Morin-Strom: Yes, but I would like to move one related to subsection 11(7). It is subsection 11(6) now.

The Chair: Mr Morin-Strom moves that subsection 11(6) of schedule 1 to the bill be amended by striking out "as the board permits" in the fourth and fifth lines.

Mr Morin-Strom: I think the right to buy back the service over 10 years should be a right, not a right that is qualified by the phrase "as the board permits."

Ms Hošek: Our motion does not remove discretion from the board; this one does. We have clearly made a decision that we do not want to remove discretion from the board. It has the fiduciary responsibility for the plan.

The committee divided on Mr Morin-Strom's amendment, which was negated on the same vote.

The Chair: Shall section 11 carry? Carried. Shall section 12 carry? Carried. Shall subsections 13(1) to (8), inclusive, carry? Carried.

Ms Hošek moves that subsections 13(9) to 13(14) of schedule 1 to the bill be struck out and the following substituted therefor:

"(9) The amount, if any, by which the total of contributions made to the fund by or on behalf of a member and the interest credited to the member under subsection 6(6) exceeds the total payments made from the fund to the member as a former member and as a survivor pension to the former member's spouse or child or children as a result of the former member's death shall be paid to the former member's estate.

"(9a) Despite subsection (9), if a former member who is in receipt of a pension dies survived by a child or children under 18 years of age or by a spouse from whom the former member is not living separate and apart, and if none of them is entitled to a survivor pension under the plan as a result of the death of the former member, the amount, if any, by which the aggregate of such of the amounts mentioned in subsections 11 and 12 as are applicable and of the additional amount mentioned in subsection 13 exceeds the total payments made from the fund to the former member shall be paid to the surviving spouse, or if there is no surviving spouse, to the child or children, if any, of the former member under 18 years of age at the former member's death.

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"(10) Despite subsections 1, 2, 4 and 5, a member with credit in the plan for less than 10 years and with less than 10 years of continuous

membership in the plan who ceases to be a member because of a mental or physical incapacity that is found by the board to have rendered the member unable to perform his or her duties is entitled to be paid from the fund the amount, if any, by which,

"(a) the aggregate of such of the amounts mentioned in subsections 11 and 12 as are applicable and of the additional amount mentioned in subsection 13,

"exceeds,

"(b) the aggregate of the amount of the commuted value of any pension benefit for which the member is eligible and the amount of any refund to which the member is entitled under subsection 14.

"(11) A person entitled to a refund provided by this subsection is entitled to be paid from the fund an amount equal to the total of the contributions made to the fund or a predecessor fund by or on behalf of the member in respect of employment or service for any period before the 1st day of January, 1987, together with the interest credited in the fund to the member.

"(12) A person entitled to a refund provided by this subsection is entitled to be paid from the fund an amount equal to the total of the contributions made to the fund or a predecessor fund by or on behalf of the member in respect of employment or service for any period after the 31st day of December, 1986, together with interest credited in the fund to the member.

"(13) A person entitled to a payment provided by this subsection is entitled to be paid from the fund an additional amount equal to,

"(a) the amount of a refund to which the person is also entitled under either or both of subsections 11 and 12,

"less,

"(b) any portion of the amount of the refund that is attributable to a payment made by the person under subsection 11(2) or (4) or section 35a and interest credited to the member in respect thereof.

"(14) The amount by which the total of the contributions, other than contributions made under subsection 11(2) or (4) or section 35a, made to the fund by or on behalf of a member in respect of employment or service for any period after the 31st day of December, 1986, and the interest credited to the member in the fund on those contributions exceeds one half of the commuted value, excluding credit in the plan for contributions made under subsection 11(2) or (4) or section 35a in respect of employment or service after the 31st day of December, 1986, of

the pension or deferred pension in respect of that employment or service to which the member is entitled on ceasing to be a member shall be refunded to the former member.

“(14a) The amount by which the total of the payment to the fund made under subsection 11(2) or (4) or section 35a and the interest credited to the member on that payment in accordance with the Pension Benefits Act, 1987, exceeds the commuted value of the credit in the plan that was purchased with that payment and that is included in a deferred pension that the member has elected to transfer under subsection 16(6) shall be refunded to the former member.”

Ms Hošek: If there is a test at the end, we are in trouble.

This amendment to subsection 13(9) clarifies that the refunds being paid under section 13(9) are paid on behalf of pensioners who are deceased. The refund is the amount by which the pensioner's pension contributions plus interest exceed all payments.

(9a) This amendment provides for a refund of twice the contributions plus interest less any benefits paid where there is no entitlement to a survivor pension. This is consistent with the rules under the current Public Service Superannuation Act.

(12) and (13) This amendment clarifies that where contributions plus interest are being refunded for pre- and post-1986 service, the interest includes any applicable interest which may have accrued under the old act prior to 1 January 1990.

(14a) This amendment provides that where a member has paid the full cost for obtaining previous pensionable service and then terminates and elects to transfer the commuted value of his or her pension, the amount by which the amount paid by the member for purchasing the service exceeds the commuted value related to that purchase will be refunded to the member. This is presumably for someone who might be going back and forth between the public sector service plan and then out and perhaps back in again, so that there will be no loss in that transfer if there are occasional transfers back and forth. If there are any questions on that, I am going to ask one of the technical people to answer them, not me.

The Chair: Okay. All those in favour of the proposed amendment?

Mr Morin-Strom: Where is the explanation?

The Chair: She just gave the explanation.

Ms Hošek: I just gave you the explanation, but if you want me to—

The Chair: Please do not ask her to go over it again.

Interjection: You did not give him a chance to wake up after you read that motion.

Ms Hošek: I have to admit that it was not the most dramatic thing I have ever read, and I will bring you a great poem next time, but this is it. Ask a question and I will be glad to answer, if I can.

Mr J. B. Nixon: Beautiful legislative drafting. Legislative counsel do a wonderful job.

Ms Hošek: Naturally, if there are any questions, I will be glad to answer or try to have them answered.

Mr Morin-Strom: Okay, so what are these about?

Ms Hošek: What this is about is making sure that if people buy back their service and then there are patterns for refund that it is consistent with what was there before and that in particular, for people going back and forth, going into the public sector plan, buying back their service, then going back out again, the various formulae for calculating do not disadvantage those persons. That is what it is about.

The Chair: You should have said that; it could have saved you all that reading.

Motion agreed to.

The Chair: Shall subsection 13(15) carry? Carried. Shall subsection 13(16) carry? Carried. Subsection 13(17)? Shall section 13, as amended, carry? Carried.

Shall section 14 carry? Carried. Shall section 15 carry? Carried.

Section 17 we will have to take a subsection at a time. Shall subsection 17(1) carry? Carried. Subsection 17(2)? Carried. Subsection 17(3)? Carried. Subsection 17(4)? Carried. Subsection 17(5)? Carried.

We have a government motion, subsection 17(6a).

Ms Hošek moves that section 17 of schedule 1 to the bill be amended by adding thereto the following subsection:

“(6a) There shall be excluded from the period of time mentioned in subsection 16(3) and subsections (2) and (6) any period of time for which a former member has credit in the plan and for which the former member was employed by a person who did not, during or after that period of time, contribute to the fund or a predecessor fund under the plan or the Public Service Superannuation Act.”

Ms Hošek: What this is about is that it is meant to ensure that plan members will be able to buy back entitlement to the additional benefits available under the pre-1966 guarantee based on employment with the Ontario public service only.

The Chair: That was very nice reading. I have been informed by the clerk that we in fact should have a vote on subsection 17(6) before we go on to subsection 17(6a). It is my fault. Shall subsection 17(6) carry? Carried. Thank you. Now that bit of reading, explanation on subsection 17(6a), please.

Ms Hošek: I just said that the amendment I read, which is subsection 17(6a), is to ensure that plan members will be able to buy back entitlements that were available under the pre-1966 guarantee based on employment with the Ontario public service only.

What that is really about is that when the new pension plans came in, when CPP came in, employees who were in place in the OPS were guaranteed not to lose anything because of the transition to the Canada pension plan. The attempt is to make sure that that right is given to those employees but no further, because if it went further to include employees who were not around in 1966, what you would have is current pension plan members subsidizing those people who were not here then.

The Chair: Any questions?

Motion agreed to.

1620

The Chair: Shall subsection 17(7) carry?

Mr Morin-Strom: No.

The Chair: Oh, sorry. We have an amendment.

Mr Morin-Strom: I move that it be deleted, but I think we—I do not believe that this section is necessary in the bill. This section really is one which takes away rights to a 60 per cent survivor pension, which was guaranteed in the Pension Benefits Act.

Part of what was supposed to have been progressive legislation in trying to improve pension benefits by the province was the guaranteeing of survivor benefits at a rate of 60 per cent rather than what had previously been 50 per cent, and I find it unacceptable that the government wants to penalize pensioners and potential retirees for getting something that is their right now.

The suggestion that they should have to pay for it and that the only way they can get their full pension is to give up that right to 60 per cent and

go back to the 50 per cent level, which had been the previous standard, is really an affront to spouses, particularly women, because we know that in terms of longevity, women, on average, outlive men. We are in a case where widows are going to have to live on a 50 per cent pension rather than a 60 per cent pension because of this penalty.

Not only that, of course, but even if they decide to take the 60 per cent at the reduced level, they get 60 per cent of a reduced pension, not 60 per cent of what the pension formula was, so you get hit either way. You are not getting the 60 per cent pension that the Pension Benefits Act was intended to guarantee to spouses.

Ms Hošek: All spousal pensions are always going to have some actuarial reduction on them. In this one, for 50 per cent, there is no cost to the plan member; for 60 per cent, there is an actuarial reduction.

The costs of trying to enhance this benefit right here are quite significant. There would be \$200 million added to the initial unfunded liability by making this change and the contribution rate would have to go up by 0.2 per cent, both for all employees and for the employer, in order to make this particular enhancement. If the experience of the fund down the road is that it is doing better, that would be available for the board to decide about, but to make that on the spot here is an extremely expensive proposition, and I would speak against it for that reason.

The committee divided on schedule 1, subsection 17(7), which was agreed to on the following vote:

Ayes

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola;

Nays

Charlton, Morin-Strom.

Ayes 5; nays 2.

The Chair: Shall subsection 17(8) of schedule 1 carry? Thank you. Shall section 17, as amended, carry? Carried.

Could I have unanimous consent to move to schedule 2 of the bill in order to get it moved and on the floor for discussion by the minister?

Mr Morin-Strom: What is the purpose of that?

The Chair: The clerk has given me some advice.

Clerk of the Committee: This is a money amendment. Only a minister can move the

amendment. That is the reason why the minister is here.

The Chair: That is my feeling exactly.

Mr Morin-Strom: I find it a bit offensive that the minister has not been here through the whole process and then asks for special considerations.

The Chair: Without irritating Brad here—

Hon Mr Elston: I am prepared to leave. I am not going to upset things. Listen, I will come back; give me a call later. I do not want to disrupt you; give me.

Mr J. B. Nixon: While the minister is departing, let me tell you I find it incredibly offensive that that member takes that position when he asked us for unanimous consent to go back to a provision to have a recorded vote. If he is going to sit around and take offence, I am going to put it on the record that I take offence at his behaviour.

The Chair: Shall section 18 carry? Carried.

Shall subsection 19(1) of schedule 1 carry? Carried.

Ms Hošek moves that subsection 19(2) of schedule 1 of the bill be amended by inserting after "subsection (1)" in the first line "or subsection 21(1)."

Ms Hošek: The reason for this is to clarify that where there is a survivor pension paid to a surviving spouse and the former member is under 65, the survivor pension will be calculated as though the former member had attained age 65. This is consistent with the provisions of the Public Service Superannuation Act, so it is really in keeping with the way the old act read.

Motion agreed to.

The Chair: Shall subsections 19(3), (4), (5) and (6) carry? Carried.

Shall section 19, as amended, carry? Carried.

Shall section 20 carry? Carried.

Ms Hošek moves that subsection 21(1) of schedule 1 to the bill be amended by inserting at the beginning thereof, "subject to subsection 19(2)."

Ms Hošek: It again clarifies that where there is a survivor pension paid to a surviving spouse and the former member is under 65, the pension will be calculated as though the former member had attained age 65. Again, it is consistent with the previous provisions of the PSSA.

Motion agreed to.

The Chair: Shall subsection 21(1), as amended, carry? Carried. Shall subsections 21(2), (3), (4) and (5) of schedule 1 carry? Carried.

Shall section 22 carry? Carried.

Shall subsections 23(1) and (2) carry? Carried.

Mr Morin-Strom moves that subsection 23(3) of schedule 1 to the bill be struck out and the following substituted therefor:

"(3) For the purpose of this section and subsection 19(6), a child 18 or more years of age shall be deemed not to have reached 18 years of age,

"(a) if the child is less than 25 years of age and is in full-time attendance at a school or university, having been in such attendance substantially without interruption since the child reached 18 years of age, or

"(b) if the child is not described in clause (a) and is disabled, having been disabled without interruption since the time the child reached 18 years of age."

Mr Morin-Strom: There are two aspects here. First of all, with respect to children continuing in school, the previous provisions of the pension plan included coverage up to age 25 and the coverage under the section as it is written right now only provides for coverage for five years following secondary school, which added on to 18 only goes up to 23, so there has been a cutback of two years in the coverage here.

1630

Ms Hošek: This is a charter issue and it is related to the elimination of age-specific differences. The understanding we have is that the current provision in the bill gives discretion to the board in determining what "continuously in school" means. So that is there, in the opinion of the board, to make up its mind about whether someone is perceived to be continuously in school. The member is giving a specific year; the legislation gives a suggestion about the definition of what being in school is, and that is a discretion of the board.

Mr Morin-Strom: I did not hear a point on the disabled. Why are you denying this kind of right to the disabled beyond the age of 18?

Ms Hošek: Because the question is the discretion of the board and it would be for ever. If someone is disabled he could be, presumably, disabled for ever and you would have, therefore, the child entitled to this for ever in a way that you simply could not manage the funding for and figure out. You do not know how long—

Mr Charlton: So instead, you dump them on to the state heap.

The committee divided on Mr Morin-Strom's amendment to subsection 23(3) of schedule 1, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

The Chair: Shall all of section 23 carry? Carried. Shall section 24 carry? Carried. Shall section 25 carry? Carried.

Ms Hošek moves that subsection 26(1) of schedule 1 to the bill be amended by striking out the words "in the service of the crown" in the second and third lines and inserting in lieu thereof "by an employer who contributes to the fund."

Ms Hošek: Again, this clarifies that the conditions affecting re-employment affect pensioners who are re-employed by any of the employers as defined under the act. It is consistent with the changes we have made all along about redefining employers.

Motion agreed to.

The Chair: Shall section 26, as amended, carry? Carried. Section 27? Carried. Section 28? Carried.

I see some amendments. Shall subsection 29(1) of schedule 1 carry? Carried. Shall subsection 29(2) carry? Carried. I have an amendment to subsection 29(3) from the government, but we will deal with Mr Morin-Strom's amendments to subsections 29(3), (4), (5) and (6) first.

Mr Morin-Strom moves that subsections 29(3), (4), (5) and (6) of schedule 1 of the bill be struck out and the following substituted therefor:

"(3) The board shall be composed of eight board members.

"(4) The Lieutenant Governor in Council shall appoint as board members four individuals recommended by the minister.

"(5) The bargaining agents shall appoint four individuals as board members, at least three of them to be appointed by the Ontario Public Service Employees Union.

"(6) The Lieutenant Governor in Council shall determine the term of office of each of those board members appointed by him or her, which term shall not exceed three years.

"(7) The bargaining agents shall determine the term of office of each board member appointed by them, which term shall not exceed three years.

"(8) The board members shall elect one of them to be chairperson and may elect one or more of them to be vice-chairperson.

"(9) The term of office of a chairperson or vice-chairperson shall not exceed the lesser of two years or the remaining period of his or her appointment to the board."

Mr Morin-Strom: We should have a board that has some balance on it. This is a way of ensuring that, so that the employees who are the beneficiaries of the plan—these funds are there for the employees—have at least an equal say on the board.

Ms Hošek: What this does is create through the proposed amendment a partnership agreement, which was not achieved and arrived at in the discussions between the employer and the employee. What is described here is a joint board, a partnership board without sharing the risk.

Subsection 6(3) of the act provides equal representation and joint management without risk-sharing. The act currently allows the board to select a chairperson if the Lieutenant Governor in Council does not appoint one. So that is there. The bargaining agent is left to appoint the fourth employee representative. We have got the Ontario Provincial Police Association involved in this pension plan and also management employees. This amendment would create a joint management without risk-sharing, and only one of the member groups is adequately represented in the way that is proposed here.

Mr Morin-Strom: I beg to contradict. The unions will be there to represent their union members and management has the right to appoint four members as well. The government can appoint those four members, so there is no reason why it cannot select representatives of management employees and of the OPP as its portion of the board.

The committee divided on Mr Morin-Strom's amendment to subsections 29(3), (4), (5) and (6) of schedule 1, which was negated on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 5.

The Chair: Ms Hošek moves that subsection 29(3) of schedule 1 to the bill be struck out and the following substituted therefor:

"(3) The board shall be comprised of at least four members appointed by the Lieutenant

Governor in Council, one of whom shall be representative of the members of the plan who are members of a union with whom the employer has a collective agreement.

"(3a) Each appointment or reappointment of a board member shall be for such term, not exceeding three years, as the Lieutenant Governor in Council specifies."

Ms Hošek: What this does is make clear what was implied in the previous wording of the legislation, that at least one member of this board will be representative of members of the union with whom the employer has a collective agreement. This is firming up what the practice has been and what it is going to continue to be.

Motion agreed to.

The Chair: Shall subsection 29(3), as amended, carry? Carried. Shall section 29, as amended, carry? Carried. Shall sections 30 to 35, inclusive, carry? Carried.

The parliamentary assistant has a new part of section 35.

Ms Hošek: That is right. This is an addition to section 35.

1640

The Chair: Ms Hošek moves that schedule 1 to the bill be amended by adding thereto the following section:

"35a. (1) Any agreement in writing between a person and the minister or the crown for the reciprocal transfer of pension credits between the public service superannuation fund established under the Public Service Superannuation Act and another pension plan continues to apply to the plan with all necessary modifications.

"(2) If the board enters into a written agreement with an employer to whom the plan does not extend for the transfer to the plan of credit for a person's service with that employer, the person shall, on becoming a member and requesting a transfer of credit to the plan in accordance with the agreement, pay or cause to be paid into the fund the amount provided for in the agreement for the purchase of the credit that is being transferred.

"(3) If the board enters into a written agreement for the transfer from the plan to another pension plan registered under the Income Tax Act (Canada) of credit in the plan in respect of members who become members of the other plan, the board shall, at the request of a member transferring credit from the plan in accordance with the agreement, pay from the fund to the plan to which the member's credit is being transferred the amount provided for in the agreement for the

purchase of credit for the member in the other plan.

"(4) Subsections (1) to (3) apply despite section 11 or 13.

"(5) The board shall not enter into an agreement mentioned in subsection (2) or (3) until the agreement is approved by the Lieutenant Governor in Council."

Ms Hošek: The meaning of this particular amendment is that it provides for the transfer in and the transfer out of funds according to the terms of a transfer agreement that has been entered into by the minister. In future, transfer agreements will be entered into by the board with the approval of the Lieutenant Governor in Council.

This is a transition, in the sense that it manages what is currently in place in relations between the crown and the minister and other transfer possibilities. In the future that will be done by the board.

The Chair: All those in favour of the proposed section 35a? Opposed, if any? Carried.

Mr Morin-Strom moves that section 36 of schedule 1 to the bill be struck out and the following substituted therefor:

"36. (1) Within six months after the end of each fiscal year, the board shall provide the minister and the bargaining agents with an annual report upon the affairs of the board.

"(2) The minister shall submit the board's annual report to the Lieutenant Governor in Council and lay it before the assembly if it is in session or, if not, at the next session."

Mr Morin-Strom: I think that there should be a time limit for the providing of the annual reports and this is in line with the Pension Benefits Act. I think that the providing of fiscal reports on this pension plan should have to adhere to the same rules as other pension plans under the Pension Benefits Act.

Ms Hošek: This would put a time limit on it, but six months is more or less what is now current practice for a report. We do not understand why this should go to the bargaining agents if this is not a partnership at this stage, but Bill 36 does provide for a report on financial and other affairs of the plan and of the fund. So at the moment the bill does provide for a report on both the financial and other issues that have been raised in the plan and in the fund. I do not see what this adds.

The committee divided on Mr Morin-Strom's amendment to section 36, which was negatived on the following vote:

Ayes

Charlton, Morin-Strom.

Nays

Hošek, LeBourdais, Nixon, J. B., Oddie Munro, Sola.

Ayes 2; nays 5.

The Chair: Shall section 36, as proposed, carry? Carried.

Ms Hošek moves that clause 37(1)(b) of schedule 1 to the bill be amended by striking out the words "subsections 6(2) and (3) of this act" in the last line and inserting in lieu thereof "subsections 7(2) and (3) of this act."

Ms Hošek: Basically, what we are doing is correcting the reference in the act that corresponds to the OPP supplementary account. Currently it refers to subsections 6(2) and (3) of the act; the correct subsections are 7(2) and (3). There simply has been a mislabelling here; we are clearing up the mislabelling.

The Chair: All those in favour of the proposed amendment? Carried. Shall section 37, as amended, carry? Carried. Shall section 38 carry? Carried.

Schedule 1, as amended, agreed to.

Schedule 2:

Mr J. B. Nixon: How about a five-minute recess while we call the minister?

The Chair: Five minutes in order for the minister to come and deal with schedule 2.

The committee recessed at 1646.

1647

The Chair: That was a quick five minutes. We are back at it, dealing with schedule 2. There is a schedule to be moved.

Mr Elston moves that schedule 2 of the bill be struck out and the following substituted therefor:

Date of payment	Amount of Payment
1. January 1, 1990	\$7,283,000
2. February 1, 1990	7,316,000
3. March 1, 1990	7,349,000
4. April 1, 1990	7,381,000
5. May 1, 1990	7,414,000
6. June 1, 1990	7,448,000
7. July 1, 1990	7,481,000
8. August 1, 1990	7,514,000
9. September 1, 1990	7,548,000
10. October 1, 1990	7,582,000
11. November 1, 1990	7,616,000
12. December 1, 1990	7,650,000
13. January 1, 1991	7,684,000
14. February 1, 1991	7,718,000

15. March 1, 1991	7,753,000
16. April 1, 1991	7,787,000
17. May 1, 1991	7,822,000
18. June 1, 1991	7,857,000
19. July 1, 1991	7,892,000
20. August 1, 1991	7,928,000
21. September 1, 1991	7,963,000
22. October 1, 1991	7,999,000
23. November 1, 1991	8,034,000
24. December 1, 1991	8,070,000
25. January 1, 1992	8,106,000
26. February 1, 1992	8,143,000
27. March 1, 1992	8,179,000
28. April 1, 1992	8,216,000
29. May 1, 1992	8,252,000
30. June 1, 1992	8,289,000
31. July 1, 1992	8,326,000
32. August 1, 1992	8,364,000
33. September 1, 1992	8,401,000
34. October 1, 1992	8,439,000
35. November 1, 1992	8,476,000
36. December 1, 1992	8,514,000

The minister probably has a brief explanation.

Hon Mr Elston: Very brief. This revises the interim special unfunded liability payments over the first 36 months, from 1 January 1990 to 1 December 1992.

The Chair: Do you have a question?

Mr J. B. Nixon: Yes, I do. I take it these are moneys paid by the government of Ontario pursuant to its commitment to fund the unfunded liability which has arisen since the creation of the superannuation fund.

Hon Mr Elston: That is correct. This is government money, taxpayers' money.

Mr J. B. Nixon: Taxpayers' money.

Hon Mr Elston: That is right.

The Chair: All those in favour of the proposed amendment?

Mr J. B. Nixon: Recorded vote.

The committee divided on Mr Elston's amendment to schedule 2, which was agreed to on the following vote:

Ayes

Charlton, Elston, Hošek, LeBourdais, Oddie Munro, Nixon, J. B., Sola.

Ayes 7, nays 0.

Bill, as amended, ordered to be reported.

The Chair: Thank you for your patience. Before we leave, we have two things to do. Minister, you can stay if you like, but we are finished with you. Thank you very much.

Hon Mr Elston: You were finished with me before I started.

The Chair: This is life in the fast lane.

ORGANIZATION

The Chair: I have been informed by Mr Furlong that he has tendered his resignation as vice-chairman. We need to elect a new vice-chairman. I am open for nominations.

Mr Nixon moves that Ms LeBourdais be nominated for election as vice-chairman.

Mr J. B. Nixon: I am convinced she will do an excellent job.

The Chair: Any further nominations? Seeing none, all those in favour? Opposed, if any?

Motion agreed to.

The Chair: We have one other piece of business dealing with Bill 68. As you aware, the bill was referred to this committee on Tuesday. What has been proposed is to establish a subcommittee to meet on scheduling and procedure of Bill 68. If that meets with your approval, it would be done some time Tuesday afternoon, with a report back to this committee on Thursday. That is one item.

Also, if possible, we could have a briefing from the ministry starting on Thursday, the 14th.

Mr Charlton: That is next Thursday.

The Chair: That is correct. Does that meet with everybody's approval?

Mr Charlton: One question before we leave that. I have no problem with that.

The Chair: Mr Charlton moves the striking of a subcommittee to deal with scheduling on Bill 68 and to invite the ministry to the committee for presentations and briefing on the 14 December.

Motion agreed to.

Mr Charlton: In relation to the referral of this bill, it was our understanding in our caucus that there were some conditions attached to the six weeks of hearings. I assume from what you have just said that at least part of those conditions has been waived, ie, two weeks of hearings prior to the Christmas break. I want to be clear that we are not jeopardizing the six weeks of hearings by what is happening here.

Mr J. B. Nixon: We had better go back to our leaders and clarify, because my understanding was that there were two weeks of proceedings prior to Christmas and four weeks after, and that was the entire six weeks.

Mr Charlton: That is right.

Mr J. B. Nixon: Is that what you understand?

Mr Charlton: Yes.

Mr J. B. Nixon: We are in agreement.

Mr Charlton: Yes, but the problem, as I understand it, is that as of today, the motion—

Mr J. B. Nixon: The motion does not direct that.

Mr Charlton: —the intention is not to sit on the 21st.

Mr J. B. Nixon: I did not realize that.

The Chair: It is news to us.

Mr Charlton: We need to clarify.

Mr J. B. Nixon: We are sitting on the 21st, are we not?

Mr Charlton: It is my understanding as of this morning that we may very well be finishing on the 20th.

The Chair: Maybe we could get that clarified for when we meet on the 14th.

Mr Charlton: I want to ensure that whatever happens outside of this committee does not jeopardize the six weeks that we negotiated to get.

Mr J. B. Nixon: I hear you.

The Chair: Six weeks in terms of—

Mr Charlton: Of the procedure around this bill.

Mr J. B. Nixon: Some of those weeks, it was my understanding, and I think Brian and I are agreed—

Mr Charlton: That two weeks were to happen before the Christmas break.

The Chair: Can I approach it this way? If we get an indication that we are not sitting on the 21st, is there any mechanism for us to sit some time during that week in order to fulfil that—

Mr Charlton: Not without permission.

Mr J. B. Nixon: Yes.

Mr Charlton: We can request permission to sit another day that week. If they grant it, that is fine, but one way or another I would like it clarified.

The Chair: We will have a clarification for next week.

Mr J. B. Nixon: Wait a second.

Mr Charlton: Try to get it before the steering committee meets.

Mr J. B. Nixon: If we are going to sit the following week, let's anticipate what we plan to do. I had thought we would begin public hearings at that point, someone would come in and talk to us. Are we going to do that by invitation? We will not have time to advertise.

The Chair: That is what the subcommittee is going to have to—

Mr J. B. Nixon: No, I realize that, but even if the subcommittee makes a decision on Tuesday and brings it to this committee for Thursday, it will be too late if you want to do a hearing by advertising.

The Chair: For the 21st?

Mr J. B. Nixon: Yes.

The Chair: I have asked the clerk to approach each of the critics to develop a list of groups they would like to see invited to make a presentation to the committee. Mr Kormos made a commitment to the clerk, as well as Mr Runciman, that he would bring that to a subcommittee meeting.

Mr J. B. Nixon: Do you want me to do that?

The Chair: Yes.

Mr J. B. Nixon: This is the first I have heard of that. I know I am on the subcommittee, but it is the first I have heard that we are to bring a list.

The Chair: At the subcommittee meeting on Tuesday which we are scheduling, the one

everybody is in agreement with, there will be a list of those individuals who are being invited. If we sit on the 21st, we can have—

Mr Charlton: Let's short circuit this discussion and deal with Brad's concerns, because they are legitimate concerns.

The Chair: Okay.

Mr Charlton: I think we can easily reach a consensus that if we have hearings on the 21st or some other day that week, they will have to be invited presentations as opposed to those who indicate an interest as a result of advertising, and that we proceed to advertise for the process after Christmas.

The Chair: Okay.

Clerk of the Committee: Next week is going to be the ministry briefing.

The Chair: The ministry briefing next week, and if we sit the following week, it will be by invitation only. Thank you very much.

The committee adjourned at 1657.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: Furlong, Allan W. (Durham Centre L)

Bryden, Marion (Beaches-Woodbine NDP)

Charlton, Brian A. (Hamilton Mountain NDP)

Cureatz, Sam L. (Durham East PC)

LeBourdais, Linda (Etobicoke West L)

McLean, Allan K. (Simcoe East PC)

Nixon, J. Bradford (York Mills L)

Oddie Munro, Lily (Hamilton Centre L)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Substitutions:

Cleary, John C. (Cornwall L) for Mr Furlong

Elston, Hon Murray J., Chairman of the Management Board of Cabinet and
Minister of Financial Institutions (Bruce L) for Mr Velshi

Hošek, Chaviva (Oakwood L) for Mr Velshi

Morin-Strom, Karl E. (Sault Ste Marie NDP) for Ms Bryden

Clerk: Carrozza, Franco

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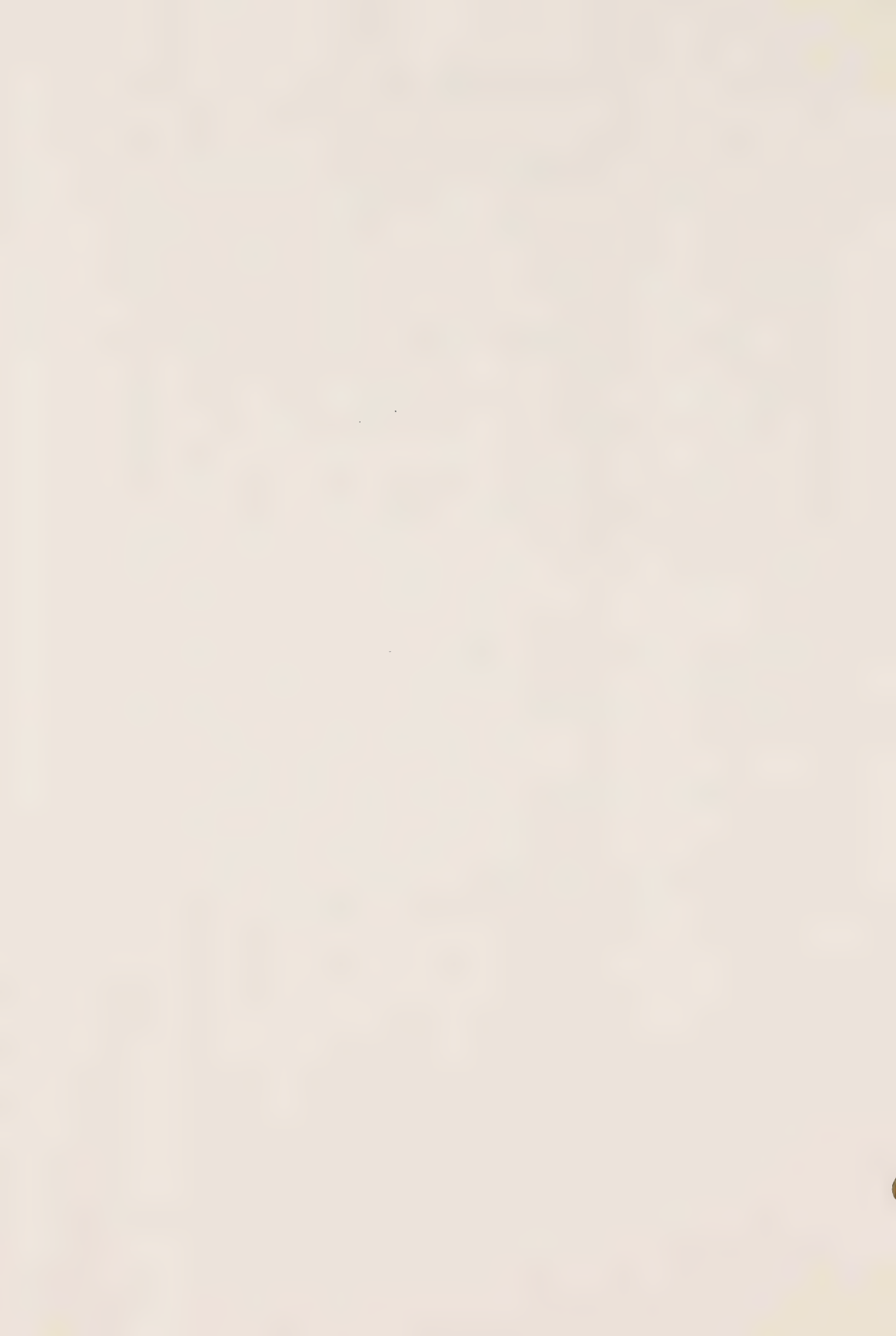
YEAGER, LEWIS, RESEARCH OFFICER, LEGISLATIVE RESEARCH SERVICE

Witnesses:

From the Management Board of Cabinet:

Clark, Phyllis M., Director, Pension Policy Branch

Elston, Hon Murray J., Chairman of the Management Board of Cabinet and
Minister of Financial Institutions (Bruce L)





Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Thursday 14 December 1989

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 14 December 1989

The committee met at 1009 in room 228.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I recognize a quorum. Would the parliamentary assistant to the Minister of Financial Institutions please come forward and sit beside us? I believe the deputy minister, Mr Simpson, is with us as well. Would you introduce the individuals from the Ministry of Financial Institutions, please? I believe you have a brief statement.

Mr Ferraro: I do. Thank you. Of course, I am here today as parliamentary assistant to the Minister of Financial Institutions to lead off the technical presentation on Bill 68. With me today is the Deputy Minister of Financial Institutions, Robert Simpson, and the ministry staff, who will discuss the technical aspects of the bill in detail.

With your permission, Mr Chairman, I will leave the introduction of staff to Mr Simpson when he makes his comments.

The Chair: Fair enough.

Mr Ferraro: I am pleased to be here today to discuss a very important issue; an issue that directly affects more than six million drivers in this province; an issue that demands that difficult decisions be made in the fairest and most socially responsible manner possible. I am referring, of course, to the runaway costs of automobile insurance over the past decade.

Excessive premium increases forced government to intervene by capping rates in April 1987. Yet the underlying causes of higher premiums remain. Cost pressures continue to build. Indeed, without fundamental reform to the automobile insurance system, government controls are only delaying the inevitable.

Our options were threefold.

We could have continued to hold rates at artificially low levels. This would have resulted in a short-term gain for consumers, but ultimately it would have led to a mass withdrawal of companies from the market and a widespread lack of insurance availability. Government would then have had to step in and create a public insurance system.

Some would argue that the establishment of a government-run automobile insurance monopoly would have solved all our problems, but such a step would have caused massive disruption and dislocation in an industry which currently employs 40,000 people, it would have removed competition and product choice from the marketplace and it would have resulted in massive startup costs and the creation of a large bureaucracy. More important, public delivery does very little to ensure rate stability over time because it does not address the underlying causes of high insurance premiums.

The second option was to have maintained the existing system, as some litigation lawyers have suggested, and allowed premiums to rise to a level that would have ensured product availability, but this course was clearly unacceptable when it became apparent that average premiums would have increased between 30 and 35 per cent.

The third option, the only reasonable choice, in our view, was to deal with the underlying causes of higher insurance rates through a comprehensive package of reforms. To this end, Ontario Financial Institutions Minister Murray Elston announced the Ontario motorist protection plan in mid-September, a series of reforms which addresses the problems associated with the rising costs of driving in Ontario. I will talk a little, if I may, about the comprehensive plan.

The Ontario motorist protection plan is a comprehensive plan that involves the combined efforts of several ministries. The plan provides leadership and direction and it mobilizes the government's resources in a campaign to make driving both safer and more affordable for the people of Ontario. We are in essence declaring war on the escalating risk that drivers in Ontario face every time they get behind a steering wheel: increased risk of accident, property damage, injury and death.

We all bear the cost of this carnage on our roads. For many, it means higher insurance premiums. For others, the tragic loss can be counted in family members and loved ones. The statistics are staggering. There were 203,000 automobile accidents and 121,000 injuries reported in Ontario in 1987, the most recent year for which statistics are available. Bodily injury claims last year totalled \$1.8 billion.

A series of co-ordinated initiatives will be launched on a number of fronts so that consumers are protected. Our roads will be made safer and the costs and risks of driving will be reduced as much as possible. We will address the issues of growing traffic volumes, rising accident rates, increased injuries and higher claims costs. The Ontario motorist protection plan, introduced as legislation this fall, is a bold approach that recognizes the need for long-term solutions.

Guaranteed benefits for all: What we are proposing in Bill 68 is a new social safety net. Everyone injured in an automobile accident will be entitled to enhanced accident benefits. The social objective is to provide everyone injured in an automobile accident with the compensation needed to return to as normal a life as possible. We believe that all victims of motor vehicle accidents should be protected. Most accidents are the result of a moment's inattention and, indeed, not criminal negligence.

There are compelling reasons for providing accident benefits to all injured people. The innocent families of at-fault drivers should not be burdened with a lifetime of debt and injured victims, regardless of fault, should be given proper and adequate care so that they do not become long-term dependants on society.

I would like to talk a little about the level of benefits. The plan will provide new and enriched accident benefits. For example, income replacement will rise from \$140 to \$450 a week, an increase of 221 per cent. That is equal to the average take-home pay of someone earning approximately \$30,000 a year. For the first time, students, retirees and the unemployed will be entitled to income replacement benefits of \$185 a week. Income replacement benefits for unpaid homemakers will rise from \$70 to \$185 a week, an increase of 164 per cent. Child care benefits will be provided for the first time, \$50 per child to a maximum of \$200 a week. Supplementary medical care and rehabilitation benefits will rise from \$25,000 to \$500,000. Long-term care benefits will be added to the level of \$500,000. Death benefits will be expanded from \$10,000 to \$25,000, an increase of 150 per cent.

What about the delivery of benefits? Under the proposed legislation insurance companies will be required to deliver these guaranteed benefits within 10 to 30 days of the accident, depending on the benefit, and insurers may be charged penalties for overdue compensation.

This is a very big change. This is a dramatic improvement over the current tort-based system in which victims often wait years for compensa-

tion because of complex and protracted litigation. The new insurance plan will avoid the severe financial strain on families that long delays and the costs of litigation often cause. Timely delivery of benefits is especially important in cases of rehabilitation, because early treatment is often critical to recovery.

Optional insurance: The new plan requires insurance companies to offer optional insurance for even greater accident benefit protection. Consumers will be able to tailor their insurance to their individual needs.

The right to sue in serious cases: The plan permits litigation in the event of death, permanent serious disfigurement or permanent serious impairment of important bodily functions caused by continuing injury that is physical in nature. This definition is commonly referred to as the threshold—the topic of much conversation. Litigation will be permitted only in these cases, and all victims will be protected by guaranteed accident benefits.

By limiting lawsuits to cases of serious injury or death, we estimate that millions of dollars in savings can be redistributed in the form of lower premiums and enriched accident benefits. Not surprisingly, some of the litigation lawyers do not favour this approach. After all, we are told that 30 to 40 cents of every dollar awarded goes to legal fees and settlement costs. I should add as well that I have talked to the minister and that we will make the material dealing with the cost aspects of various parts of the program available to the committee in due course.

Tort reform: Since access to the courts will be retained in cases of serious injury or death, the Attorney General (Mr Scott) is proceeding with tort reform. Measures will include streamlining the litigation process, changing the way pre-judgement interest is calculated and allowing structured settlements in lieu of large lump sum awards.

The elimination of premium tax: In addition, we are eliminating the three per cent tax on insurance for personal use vehicles. This measure alone will generate \$95 million in direct premium savings for motorists.

I would like to talk a little about the deterrents to bad driving and highway safety. While all injured people will be protected, let there be no doubt that bad drivers will be penalized under the new system. The Ontario motorist protection plan is not designed to protect the bad drivers of this province. It will penalize them more than ever and it will be rigorous in prosecuting those

who would make our roads and highways into war zones.

Deterrence will be a key component of the new system. The Ontario motorist protection plan will continue to use fault for rating purposes. Bad driving will result in higher insurance premiums and good driving records will be reflected in preferred rates.

1020

It is questionable whether the current tort-based system really acts as a deterrent to bad driving, as some litigation lawyers have suggested. The number of accidents and injuries on Ontario's roads and highways continues to rise in spite of the threat of lawsuits. We believe that the best deterrents to bad driving come from criminal sanctions, higher insurance premiums, vigilant enforcement and better education.

Therefore, other initiatives in the plan to deter bad driving and promote highway safety include: Police enforcement, especially on Highway 401, will be enhanced; fines for speeding will be more than tripled—some of the announcements have already been made—and fines for other traffic offences will be increased later; and people convicted of impaired driving will not be eligible for income replacement benefits if injured. In order to protect their innocent family members, however, they will be entitled to the other accident benefits.

Under our new program, drunk driver repeat offenders will be required to seek treatment and produce proof of having effectively dealt with their problem before driving privileges will be reconsidered. The full weight of the law will continue to be applied to fines, jail sentences and other sanctions, and drinking and driving convictions will result in much higher insurance premiums.

Traffic volumes have increased dramatically in recent years as our population and economy have grown. The number of licensed drivers in Ontario has risen sharply from 4.7 million in 1978 to more than six million. New technology will be tested and adopted to help manage this traffic congestion, including advanced computer systems, vehicle detectors, closed-circuit television and lane control signs.

Public education campaigns will be launched to promote the increased use of seatbelts and daytime running lights. It is estimated that a 10 per cent increase in the use of seatbelts alone could save as many as 80 lives and prevent more than 1,300 injuries a year in Ontario. In addition, we will seek the assistance of the private sector in promoting workplace driver safety programs.

The insurance commission and, indeed, its relevance for consumer protection: Insurance companies will be subject to a tough new regulatory regime. The new Ontario Insurance Commission, to be created through a merger of the Ontario Automobile Insurance Board and the office of the superintendent of insurance, will have broad powers of intervention and enforcement. It will be responsible for ensuring that accident victims receive adequate and prompt compensation and that disputes are resolved quickly through mediation and arbitration. The Ontario Insurance Commission will also be responsible for protecting the interests of consumers and regulating rates.

New consumer protection measures will include: a requirement that all insurance companies offer policyholders the option of monthly billing; a prohibition on tied selling—in other words, making the sale of one insurance product conditional on the purchase of another product—minimum 30-day notice to consumers of any policy changes or cancellations; a provision allowing specific drivers to be excluded from a household policy so that good drivers are not penalized by bad drivers in a family; a requirement that insurance policy documents provide full disclosure of the separate components of the auto insurance coverage, how each component was rated and the cost of each part; and a requirement that brokers must disclose, on request, the number and identity of insurance companies with whom they have contracts.

Other measures will be adopted to protect the rights of consumers and help reduce the costs of operating an automobile in Ontario. We will expand the "ghost car" program to deter fraud by repair shops. This operation, using an unidentified car with no damage, helps investigators detect repair shops that are ripping off motorists.

In addition, it is clear that claims abuses by a few dishonest people can result in higher premiums for the majority of honest policyholders. Under the new Ontario motorist protection plan, insurance companies will have to establish programs that assist in deterring fraudulent claims for property damage and theft.

Let's talk about the premiums.

Government controls on auto insurance have kept premium increases to reasonable levels over the past two years. But without fundamental reform as proposed in this plan, motorists will be facing average rate increases of 30 per cent to 35 per cent when controls expire next year.

We are confident that this comprehensive plan will hold premium increases to very moderate

levels in 1990 and will stabilize rates in years to come. The government expects that next year average premiums will rise no more than eight per cent in urban areas and average rates for motorists in rural areas will not increase at all.

In conclusion, the Ontario motorist protection plan is a unique approach, a made-in-Ontario plan that balances the need for affordable auto insurance with the requirement for protection of the Ontario motorist. By guaranteeing enriched accident benefits, the plan will eliminate the need to sue for most injured victims. The savings that result will be used to keep premiums lower and provide better protection for motorists.

Now I would like to introduce again the Deputy Minister of Financial Institutions, Robert Simpson, who will lead off the technical briefing and introduce his staff on specific aspects of Bill 68.

Mr Simpson: I would like to spend just a minute or two explaining how we have structured the presentation.

If I may, I would like to suggest we have a look at page 2 of the material that is before you. It is called Technical Presentation to the Standing Committee on General Government Regarding an Act to Amend Certain Acts Respecting Insurance. On page 2 there is a proposal as to how the technical presentation might proceed. Right at the beginning is item 1, a legal overview of Bill 68, basically how the bill is structured.

Then the presentation has been divided into five subject areas with a presenter for each. We think we have chosen and grouped the subject matter reasonably well in terms of the bill and the presentation and the discussion could work in a number of ways. We are in your hands in this regard.

One way it might work, if it is satisfactory to you, is for the presenters to do the technical presentation on each of the areas, numbered 2 through 6, and then discuss them. Another possibility, of course, is to look at the entire package. We are entirely in your hands, your direction on this.

The Chair: I suggest that probably we hear the complete technical presentation and then save time at the end for questions and answers. Unless I see any violent opposition the other way, I think that is probably the best way to proceed.

1030

Mr Simpson: If I may then, we have a number of ministry staff here. The group that is in front of you will be dealing with the first three aspects of the presentation. I would like to introduce them now and, if I may, just then take another minute

or so to introduce the other people who will be coming along after them.

First, on the left, as we look out from here, is Imants Abols, who will be doing the legal overview of Bill 68. The staff will reference the pages in the technical overview as they go along to keep us on track.

Imants Abols will do item 1. Then we have Jim Wilbee, the superintendent of insurance, to deal with item 2, the regulatory authority of the proposed Ontario Insurance Commission, and Cheryl Cottle to deal with the presentation on underwriting rates and classification.

Just referring further back in the room, Gordon Graham will be doing item 4, the tort law aspects. Gillian Burton, who is at the back over there, will do item 5, accident benefits. Ted Wells, who is also back in the audience, will do item 6, alternative dispute resolution. We will be assisted throughout, to provide help as needed, information and so on, Colleen Parrish, who is the director of policy for the ministry.

Thank you very much for permitting me to introduce the staff. I will turn it over to Mr Abols to deal with item 1.

Mr Abols: I am here today to give you a general overview of the bill, really simply to identify where you will find certain provisions of Bill 68. I will be painting a very broad canvas and simply touching on the highlights of the bill.

Before doing so, I think it might be useful for the committee members to bear in mind two aspects of Bill 68. In one respect, Bill 68 is an amalgam of several bills. Much of what was in Bill 155, which was before this House in the last session, is contained in Bill 68. That bill, you may recall, dealt with a number of initiatives in the field of consumer protection for consumers of automobile insurance. Most notably, the excluded driver provision was in Bill 155, the full and fair disclosure provisions by insurance brokers was in Bill 155 and there were certain provisions enhancing the powers of the superintendent of insurance.

The bill also folds in what is now governed by the Automobile Insurance Rates Control Act and the Ontario Automobile Insurance Board Act. Those two acts combined provide a mechanism for controlling automobile insurance rates and also the agency for exercising that control, which under Bill 68 will be the new commission of insurance.

Of course, there are the new initiatives in this bill. Those initiatives include the threshold, a system for direct compensation of motor vehicle property damage and a new mechanism for

alternative dispute resolution about entitlement to no-fault benefits. Those are all essentially the core provisions in Bill 68.

The second important aspect of Bill 68 is that not all the initiatives that form part of the Ontario motorist protection plan are contained in this bill that you have before you today. Again, the most notable exception is the no-fault benefit schedule. That is contained in a separate draft regulation, and I believe that is included in your materials as well. This is the latest draft and is dated 9 November 1989.

To begin with the overview, if I could turn your attention to pages 1 to 19 of the bill that was tabled for first reading, sections 1 to 36 of the bill essentially establish certain new definitions that are necessary for the bill to operate. They also establish certain powers and duties that will flow from the creation of the Ontario Insurance Commission and the positions of insurance commissioner and director of arbitration and from the merger of the Ontario Automobile Insurance Board with the insurance division of our ministry.

At pages 19 to 21 of the bill you will find section 37. Section 37 is a critical provision because it provides the enabling authority for regulations that will be made on the passage of this bill. Again, the most notable example is the no-fault benefit regulation itself.

There is also authority to make regulations that will prescribe the rules and procedures that will govern mediations and arbitrations under the bill. There is also regulatory authority to make regulations that will prescribe a system of risk classification that automobile insurers must use or will prohibit the use of certain risk classifications or underwriting practices.

On pages 21 to 27 of the bill, and those pages contain sections 39 to 55, you will find new definitions or revised definitions. Essentially, those are the definitions that operate with respect to the automobile insurance policy itself and are found in part VI of the current Insurance Act. There are also provisions that will govern the marketing practices of insurers selling automobile insurance.

You will also find in those sections the actual provision that makes mandatory that all automobile insurance policies in Ontario provide the no-fault benefits. That is currently the case with the schedule C benefits in the Insurance Act, and that is retained in Bill 68 with respect to the no-fault benefits.

With regard to the provisions that deal with marketing practices, you have already heard a

few examples in Mr Ferraro's speech. I will just reiterate that these include provisions that will require full and fair disclosure by brokers in selling insurance. There are also certain mandatory notice provisions where insurers propose not to renew a contract or where they propose to terminate a contract during the term of a contract.

In that part of the bill you will also find, in section 52, the excluded driver provision, which again was mentioned earlier, and that is the provision that avoids penalizing a member of a household by virtue of the fact that in that household you have a driver who would be classified as a high-risk driver.

If you turn to pages 27 to 30 of the bill you will find sections 55 and 56. This is one of the first new initiatives in Bill 68. It is what is called the direct compensation system. This will be a mandatory cover of every policy of automobile insurance in the province. The system works as follows: Under the system an insured would claim from his own insurer for any property damage to his vehicle, first under the third-party liability provisions of the current policy. For example, if A runs into B and A is found to be 25 per cent at fault and B is found to be 75 per cent at fault, A's insurer will pay A 75 per cent of his or her damage under the third-party liability provisions. If A has collision coverage, which is not a mandatory cover, A will receive 25 per cent. The same operates in the case of B. His or her insurer will pay 25 per cent under the third-party liability and 75 per cent of the damage under the collision coverage if he has collision coverage.

If you turn to page 30 and continue on to page 35, sections 57 to 64 represent the core of Bill 68. It is in those sections that you will find the threshold no-fault principle. You have heard a great deal about that principle already. I will perhaps just highlight the essential aspects of that by paraphrasing what is actually in this section. It is section 231a. That section establishes the no-fault principle, which in effect maintains access to the courts for those involved in an automobile accident where death is involved or the person suffers permanent serious disfigurement or permanent serious impairment of an important bodily function which is physical in nature.

The other core element in these provisions is found on page 31 of the bill. That is the provision in section 231b referred to as the collateral source rule. Again, just to give you a brief sketch of what that rule involves, currently under the collateral source rule courts do not look at what other sources of compensation or indemnity a

claimant may have when they come to assess the final tort award. Certain commentators have remarked that this is wasteful and that the collateral source rule should in effect be repealed so that courts will be directed in the future, when making a tort award, to consider the other collateral sources that the injured person has and thereby avoid double compensation.

On page 32 you will find under a new section, section 232, rules that determine which automobile insurer is liable to pay no-fault benefits. There may very often be situations where you may have several vehicles involved in an accident. Even where there are not several vehicles involved, there may be several insurance policies that may be able to respond to an accident because of the number of occupants in the vehicle. These rules are designed to set out a priority where you first look for your no-fault benefits and in this way avoid protracted litigation over this preliminary issue of simply where do you get the money.

1040

At pages 35 to 39 you will find the other principal new initiative in this bill, and that is the establishment of a mechanism for alternative dispute resolution. Section 65 establishes this system. It is made up of principally two components: mandatory mediation and binding arbitration, binding arbitration at the option of the insured. Both aspects of this system will be administered by the insurance commission.

At pages 40 to 44 of the bill you will find section 74. Section 74 deals with certain powers of the commissioner of insurance dealing with rate and classification of insurance risks. It is in that section where you will find the commissioner of insurance's authority to prohibit the charging of automobile insurance premiums unless the rates and the classification system have been approved by the commissioner. The section also prescribes certain criteria that insurers have to follow when they establish their rates and their system of classification.

At pages 44 to 50, and that would be sections 76 to 79 of the bill, you have a further enhancement of the superintendent of insurance's regulatory powers. Again, the most notable example here is the expansion of the category of what is called unfair or deceptive acts or practices by insurers in the business of insurance. That provision or category of regulatory offence is currently found in the Insurance Act, but it has been expanded to include such things as misclassifying an insured risk, making the availability of automobile insurance tied to

the purchase of other insurance offered by the same insurer or where there has been unreasonable delay in settling a claim. All these are now, or will be under this new scheme, classified as unfair or deceptive acts or practices and can give rise to an investigation by the superintendent of insurance.

You will also find in that section an enhancement of the superintendent's powers to audit the records of an insurer and conduct more extensive examinations of an insurer's business practices.

As a last resort there is also an enhancement of the penal provisions under this bill. The fines for an individual or corporate entity have been expanded. On first offence there is a liability to a maximum fine of \$100,000 and for any subsequent convictions the maximum fine is up to \$200,000.

At the back of the bill, from pages 50 to 54 which deal with sections 81 to 91, you have the incidental amendments to other statutes. I will give you just two examples. You will find there the amendment to the Corporations Tax Act which takes away premium tax on automobile insurance policies on vehicles for personal use. There is also the provision which amends the Health Insurance Act and removes OHIP's right of subrogation with respect to compensation paid on account of injuries sustained in an automobile accident. There is also an amendment to the Motor Vehicle Accident Claims Act, and that amendment effectively permits the motor vehicle accident claims fund to respond to a claim for no-fault benefits, which is not currently the case under the Insurance Act.

Finally, I would just like to leave you with a few observations on the timing of this bill. Most of the bill, of course, will come into effect on a date to be named by the Lieutenant Governor on proclamation. There will, however, be staggered proclamation of certain provisions. Again, you will find another example on page 43, and that is section 372b. That provision establishes the prohibition on the use of certain classes of risk exposure unless they have been approved by the commissioner.

Also, I would observe that the collateral source rule, which I discussed earlier and which you will find on page 31, will affect causes of action that arise after 23 October 1989. Of course, that is the date when the bill was introduced for first reading.

This concludes the formal portion of my presentation. I thank you for your attention and I will now return the microphone to the deputy.

Mr Simpson: Thank you very much, Mr Abols. If I may, Jim Wilbee, the superintendent of insurance, will now be dealing with the Ontario Insurance Commission legislative proposals. The material is found on pages 4 to 7 of the technical brief.

Mr Wilbee: Thank you and good morning. As Mr Simpson indicated, my name is Jim Wilbee and I am the superintendent of insurance.

Bill 68 provides for a new regulatory organization for the insurance industry of Ontario. This organization will be known as the Ontario Insurance Commission. I would like to give you some information on how that organization is intended to function and how the regulation of insurance will differ from what is currently in place.

If you will refer to page 4 of the handout material, you will see that at the present time there exist two regulatory structures which oversee the activities of the insurance industry in Ontario.

The superintendent of insurance, the position which I currently have the honour to hold, has been in existence for over 100 years and has been responsible for overseeing the solvency of insurance companies operating in the province; the registration of companies wishing to do business in Ontario, as well as the registration of insurance agents; the operation of the motor vehicle accident claims fund, which is a facility to assist victims of accidents where uninsured drivers are at fault; the provision of general policy advice to the government; and, more recently, a task force in the early stages of a review designed to update Ontario's existing insurance legislation.

We also have in existence the Ontario Automobile Insurance Board, which was created in order to respond to concerns about automobile insurance rates. On page 4 you will see the illustration that indicates that the new Ontario Insurance Commission will be formed by an amalgamation of the superintendent of insurance organization and the Ontario Automobile Insurance Board organization.

In addition, the commission will be required to undertake certain new functions which are required under Bill 68. Those functions, in broad terms, include rate review, or the requirement that all companies offering automobile insurance in Ontario have the rates which they propose to charge and the classification system they propose to use approved on a company-by-company basis by the commission. My colleague on my left,

Cheryl Cottle, will be expanding on this function later in the presentation.

There will be an alternative dispute resolution system which is a mechanism of mediation and arbitration designed to resolve speedily and inexpensively any dispute between insured parties and their insurance companies over the auto insurance no-fault benefits to which they may be entitled. Ted Wells will be expanding on this item later on in the presentation.

The market conduct monitoring role means that there will be a monitoring of the ways in which insurance companies deal with their customers.

With respect to the publication of consumer information, the commission will be engaged in a variety of communication efforts designed to educate the public on how to purchase insurance, how to do comparative shopping and how to ensure they receive benefits to which they may be entitled.

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Fraud control: That is to say that the commission will be making efforts to ensure that insurance companies and law enforcement agencies step up their efforts to detect and prevent fraudulent insurance claims. Insurance fraud is a heavy contributor to the high cost of insurance.

The new insurance commission will act as an agency of the government of Ontario, which is to say it will act very much as the Ontario Securities Commission now acts. Upon proclamation of Bill 68, it will assume all of the responsibilities currently carried out by the superintendent of insurance, and building upon the base of expertise gained by the automobile insurance board and its staff, it will take on all of the new responsibilities that I have just described.

The commission, in short, has the general responsibility for the oversight of the insurance industry in Ontario. It may be some time before the final organization and staffing levels have been approved by Management Board. However, certain key roles have already been identified and provided for in the statute. You will find these listed on page 5.

First, the commissioner, of course, is the head of the commission. Second, the office of superintendent of insurance will continue to exist and is recognized under Bill 68. It will continue essentially the work it has been doing and will report to the insurance commissioner. Third, there will be a director of arbitration. This will be a senior executive, reporting to the commissioner, who will have the responsibility for the operation of the alternative dispute resolution

system. This executive will have a team of mediators which will be the first contact a member of the public will have with the commissioner's office in the event of a dispute with his or her insurance company over benefits.

The mediator will attempt to work out an amicable settlement. For those cases in which a satisfactory settlement cannot be reached on a voluntary basis, this executive will then have the responsibility of ensuring that, if the policy holder chooses binding arbitration, there will be a qualified arbitrator available to resolve the matter expeditiously and at minimal inconvenience to the policy holder in terms of his or her geographic location.

Please note that ADR, as we call alternative dispute resolution, is part of an integrated regulatory mechanism that, combined with market conduct monitoring, will allow the commissioner to be very aware of the market behaviour of all insurers. The new powers granted by this bill, which I will be outlining shortly, will enhance the regulator's ability to respond to that market behaviour in the most appropriate fashion.

In addition to the new regulatory responsibilities to be undertaken by the Ontario Insurance Commission, Bill 68 also provides the regulator with greatly enhanced powers to permit the ongoing regulatory process to be more effective. You will find these powers summarized on page 6 of the material you have been given, and they include broader powers of inquiry.

At the present time the superintendent is limited to obtaining information about contracts of an insurance company or the financial affairs of an insurance company. The new provisions will allow the regulator also to inquire into the market practices of the insurer. If, in the opinion of the superintendent, a person is committing any unfair or deceptive act, the superintendent may order that act stopped and may order changes made to remedy the situation. This is known as cease and desist powers.

The technical term "examination" has been expanded to include audits of agents and adjusters as well as insurers, and examiners will now be able to search premises and remove records if they first obtain a warrant from a justice of the peace. Auditors and lawyers may give information to the commission about an insurer and that information will be regarded as privileged.

The commission may request in court fines of up to \$200,000 for offences under this act and the

commission may apply to court to direct the person to comply with provisions of this act.

In addition to the specific powers given to the regulator, Bill 68 also makes a number of provisions that are designed to protect consumers and to give them access to additional information. These provisions you will find outlined on page 7 of your handouts, and they are as follows:

There is an expansion of the category known as unfair or deceptive acts or practices by insurers to now include misclassifying an insured risk, making the availability of automobile insurance conditional on the purchase of other insurance offered by the insurer and unreasonable delays in settling claims.

Authority is given to the Lieutenant Governor in Council to prescribe a system of risk classification that automobile insurers may be required to use to prohibit or require the use of certain risk classifications by insurers and prohibit underwriting practices respecting the refusal to write a policy, the renewal of existing policies or the termination of a policy.

The commission will be enabled to publish any information that is in the public interest.

The bill establishes the insurance commissioner's powers of inquiry with respect to an insurer's corporate records and provides that such inquiries are no longer restricted to the nature of the financial product sold by an insurer but may include inquiries into the insurer's business practices.

The bill will give consumers the option and convenience of paying their premium in monthly instalments, subject to a rate of interest that will be set out by regulation.

The bill mandates a notice provision, which means that an insured must be notified at least 30 days in advance if an insurer intends either not to renew a contract or to vary the terms of the contract. The bill provides for the authority to make regulations that would require automobile insurers to make optional additional no-fault benefits available to consumers.

The bill makes possible an endorsement to a contract of automobile insurance that will allow the naming of an excluded driver to avoid penalizing other drivers in the same household with rates applicable to the excluded driver. Operation of the automobile by the excluded driver would absolve an insurer from liability under the contract, except for certain no-fault benefits prescribed by the no-fault benefits regulation.

The bill also ensures that any innocent passengers or nonoccupants struck by drivers are

not deprived of their no-fault benefits, either because of misrepresentations in contracting for insurance or because the driver is an excluded driver.

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As the presentation continues, you will be receiving a fuller explanation on the rate control and alternative dispute resolution components of Bill 68. It may be helpful for you to bear in mind as the presentation continues that these responsibilities are among those which will be discharged by the Ontario Insurance Commission.

This concludes the formal part of this presentation. I thank you for your attention.

Mr Simpson: Thank you very much, Mr Wilbee.

The Chair: I believe it is Ms Cottle?

Mr Simpson: Yes, Cheryl Cottle, who is on our right, on underwriting, classification and rates.

Ms Cottle: Before I discuss the underwriting, classification and rating functions of the commission, I would like to put these concepts in a practical perspective.

When an individual wants automobile insurance, the first thing he or she has to do is go and make an application for insurance. Currently the application for insurance is in a form approved by the superintendent. Under Bill 68, it will be a prescribed form.

The first thing the insurance company does when it receives the application is to make a decision whether to accept or decline the application. This is what we have called underwriting.

Once it makes the decision to accept the application, the insurance company then classifies the individual according to the classes of risk exposure set out in the class plan of the insurance company. This is the classification function. Every person has a risk profile which is dependent upon his or her characteristics. Years of driving experience, whether a person lives in an urban or a rural setting, the conviction and claims history of the individual; all are examples of classes which make up the risk profile of a driver.

Once the risk profile has been determined, the insurer is then in a position to price the risk presented by this applicant. This is the rating stage. Each of the classes of risk exposure have attached to it a factor, and it is the combination of these factors which make up the premium which ultimately will be charged to the individual.

Bill 68 deals with all three concepts. My presentation begins on page 8 of the handout.

With respect to underwriting control, there is a regulation-making power in the bill to deal with declining to write contracts of automobile insurance, terminating these contracts or refusing to renew the contracts of automobile insurance. Insurers are to comply with the regulation. There is a provision in the bill which permits an insurer to apply to the commissioner for an exemption from compliance with this regulation, and the commissioner will grant the exemption if compliance would impair the solvency of the insurer or if compliance would cause the insurer to contravene the act or regulation.

Further, if certain underwriting practices were to be prescribed as unfair or deceptive acts or practices, then the cease and desist power which we have heard about from the superintendent would also be available to address these underwriting matters.

Generally, with respect to classification and rate regulation, the types of contracts of automobile insurance and the types of endorsements to which rate and classification regulation will apply will be prescribed again by regulation. Rate and classification regulation powers are found in section 369, which starts on page 40 of the bill. The Facility Association is subject to classification and rate regulation.

Clause 369(1)(a) provides that every insurer requires the approval of the commissioner of the classes of risk exposure it intends to use to determine the rate for the coverages and categories of automobile insurance. In other words, insurance companies cannot use any classes in its class plan that have not been approved by the commissioner.

There is a provision in the bill which permits classes to be prescribed by regulation. Obviously, when this is the case, then approval will not be necessary. Insurers may also be prohibited by regulation from using some classes.

The bill sets out a statutory standard which the commissioner is to apply in dealing with applications for the use of classes of risk exposure. The commissioner is not to approve an application: (a) if it is in the public interest to hold a hearing; (b) if the class is not just and reasonable in the circumstances; (c) if the class is not reasonably predictive of risk; or (d) if the class does not distinguish fairly between classes.

In making his or her determination on an application for approval of a class of risk exposure, the commissioner may take into account financial and other information and such

other matters as may directly or indirectly affect the ability to underwrite insurance for the proposed classes, may consider the classes of affiliates and shall take into consideration any policy statements made by the minister.

Misclassifying a person or a vehicle is an unfair or deceptive act or practice and the superintendent's cease and desist powers again are available to deal with misclassifications.

Clause 369(1)(b) provides that every insurer requires the approval of the commissioner of "the rates it intends to use for each coverage and category of automobile insurance." In other words, an insurance company cannot use any rates which have not been approved by the commissioner.

The commissioner is not to approve an application for rates if it is in the public interest to hold a hearing, if the rate is not just and reasonable in the circumstances, if the rate would impair the solvency of the insurer or if the rate is excessive in relation to the financial circumstances of the insurer.

In making his or her determination on an application for rate approval, the commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the proposed rates, may consider the rates of affiliates and shall take into consideration policy statements of the minister.

The commissioner also has the power to exempt insurers from having to apply for class or rate approvals for designated coverages or categories. This exemption power is found in section 370, on page 42. This exemption may be revoked by the commissioner, and where it is revoked, the insurer is then to make a class and rate approval application under section 369. The commissioner cannot exempt the Facility Association from the class and rate approval process.

The commission will use two systems of regulation to deal with classes and rates: the deemed approval system for section 369 class and rate approval applications and the file and use system for section 370 exemptions.

The approval system is commenced by an application by the insurer for class and/or rate approval in a form approved by the commissioner and with all the information that the commissioner requires to make his or her decision; 60 days after filing, which time may be extended for up to a further period of 60 days, the application is deemed to have been approved unless the applicant is advised otherwise. The commissioner may advise a "no approval" before the 60 days is

up. Where the commissioner will not approve the application, the commissioner must hold a hearing.

With respect to the hearing, the commissioner has broad powers in relation to obtaining information from insurers on their application. The commissioner may conduct an inquiry or inspection, may consider any relevant information from any source and require affiliates to file concurrently. With respect to the hearing process itself, the commissioner makes rules of practice and procedure, has the power to summon witnesses, has the power to award costs, has the jurisdiction to determine questions of fact or law and must comply with the Statutory Powers Procedure Act.

After the hearing on an application, the commissioner, by order, may approve the application, approve it subject to conditions or restrictions, refuse to approve the application or vary the classes or rates proposed in the application.

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The file and use system of regulation is used for those coverages or categories which the commissioner has exempted under section 370 from the approval system of regulation. Insurers are to file their classes and their rates for the exempted coverages or categories and they use these file classes and rates 30 days after filing.

The commissioner has a reconsideration power, so although an insurer may have had its classes or its rates approved under the approval system or the commissioner may have exempted a coverage or category from the approval system, the commissioner at any time may reconsider his or her decision and vary the classes and rates of the insurer after a hearing has been held. The reconsideration power and the grounds for reconsideration are found in section 372.

The bill expressly prohibits insurance companies from using classes or rates that have not been approved by the commissioner. Therefore, if the insurance company contravenes this statutory prohibition or contravenes the regulation, it triggers the offence provision of the bill. Noncompliance with orders of the commissioner would also be an offence.

The offence provision, which is found in section 412 on page 49, has attached to it substantial financial penalties for both the corporate entity and the individuals responsible for the corporate act. In addition, the court may order appropriate compensation or restitution to address any individual wrongs that have been

suffered because of the insurance company's offence.

This concludes my presentation.

The Chair: Thank you. I believe we have Mr Graham with the tort law aspects.

Mr Ferraro: We are going to play musical chairs.

The Chair: No problem.

Mr Ferraro: Fresh troops are arriving.

The Chair: The B team.

Mr Ferraro: There is no B team; they just keep trying harder.

Mr Graham: I have been asked to speak to you concerning the tort law aspects of Bill 68.

I am sure you have all heard Bill 68 referred to as the no-fault bill. The no-fault principle itself is established on page 30 of the act. Section 231a protects owners or occupants, and owners and occupants only, of automobiles from legal liability for bodily injury unless the injured person has suffered death, "permanent serious disfigurement" or "permanent serious impairment of an important bodily function caused by continuing injury that is physical in nature." That is quite a mouthful to read out loud.

At first glance, the threshold may seem rather complex. I think to best understand how it is intended to operate, it is useful to break it down into its component parts.

First, a fatality arising from a motor vehicle accident will clearly pass the threshold. This would permit both a suit on the part of the estate of the deceased and a personal claim under the Family Law Act—a derivative action claim. For example, a mother who had lost a daughter could bring a Family Law Act derivative claim in the case of an automobile accident.

Second, serious and permanent disfigurement is consistent with the language used in the Workers' Compensation Act as the test for entitlement to a lump sum award. It is therefore a concept that is familiar to Ontario law. It also meets the standard that Ontario legislatures have previously set for determining when a disfigurement warranted special compensation.

The bill does not specify which injuries will meet the threshold. If it were possible to define every circumstance in which an injured person might find himself, there would probably be no need to preserve recourse to the courts at all. That, however, is not possible. Courts will have to consider individual cases in light of the threshold definition and set the standards against which future disabilities must be measured.

In cases of disfigurement or impairment, the court will likely consider the overall scheme of the Ontario motorist protection plan in interpreting the statute. The package provides benefits for rehabilitation, medical care, long-term care, all of these sorts of things, on a first-party basis. It emphasizes the importance of restoring injured persons to their pre-accident status as quickly and as fully as possible.

Regrettably, there are going to be some impairments or some disfigurements that can never be fully restored. In most cases where the person cannot be made completely whole again, those are the cases that the court will regard as serious and permanent, cases of people who just cannot be completely brought back to their pre-accident status.

I would like to note too that the threshold does not focus on injury. It does not talk about serious injury; it talks about impairment. That signifies to the court that this is a subjective test. It is not the injury the person suffered but the effect that injury had on the individual and his or her ability to lead a normal life.

Both disfigurement and impairment use the same test in the threshold, "permanent serious." This indicates to the judiciary that it should interpret both subsections consistently. This will aid the courts and it will also reduce the need for tests of the threshold definition in the courts.

In applying the threshold, Ontario courts may be persuaded by American case law that has considered similar points and issues. The leading Michigan case on the threshold compliance, for example, is *DiFranco and Pickard*. This sets out criteria that an Ontario court may find useful in evaluating any impairment. They look at factors such as the body function that is impaired, the duration of the impairment, the type of treatment required to rectify the impairment and the extent of the impairment expressed in numerical terms, for example, a 10 per cent loss of use in a finger; something like that.

While this legislation could have included a list of those sorts of factors, it was not felt that it would be necessary to do so and in fact it may be unduly restrictive. Ontario courts are used to applying these sorts of factors and these sorts of considerations daily. These are the same sorts of things they have to look at today when they are assessing the level of general damages to be awarded to an injured person.

Similarly, American courts have had to consider the meaning of the term "permanent." New York courts, for example, have ruled that a disability need not be constant to be permanent.

Intermittent pain that could be expected to recur and continue for the foreseeable future was found to meet the standard of permanence. Permanence is included in the threshold to incorporate the concept of very substantial longevity. It is not an absolute.

It is also a concept that is familiar to Ontario courts. They have to deal with this concept today, once again, when they assess the general damages that a plaintiff is entitled to.

Including the word "permanent" in the threshold is also a means to assist the courts in their interpretation. Much of the litigation in Michigan, for example, revolved around the question of whether or not an impairment had to be permanent to pass the threshold. Some courts found that any impairment at all would qualify to meet the definition; others decided that it had to be absolute. So "permanent" gives guidance to the courts. It emphasizes, once again, the conceptual package of the OMPP, the concept that the emphasis is on restoring people, rehabilitating people, and it is where you cannot rehabilitate people that an individual, tailor-made compensation package is appropriate.

The threshold also requires that a body function be important before the impairment of it would pass the threshold. "Important" was included to provide direction to the courts. Once again, Michigan legislation, which does not include this qualifier, has been the subject of extensive litigation. The courts have wrestled with the question of whether any body function that was impaired was important or whether the total body function had to be impaired. "Important" sets a relatively high standard but a clear and fair standard and one that is consistent with the thrust of the legislation, the emphasis on rehabilitation and restoring the person to full and productive use in society.

Once again, whether or not a body function is important is a subjective test. If I lose 10 per cent of the use of my right index finger, that may not be an important loss. If Dave Stieb suffered the same injury, I am sure he would pass the threshold.

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Courts in Michigan have not had much difficulty in interpreting the phrase "bodily function," and "continuing injury which is physical in nature" emphasizes that physical problems must coexist with the disability. Psychiatric or emotional problems which accompany the physical injury will not be excluded.

Next I would like to speak briefly about how the issue of threshold compliance will be addressed by the courts.

Subsection 231a(3) on page 30 of the bill provides that the question of threshold compliance is to be determined by a judge. This provision is intended to achieve three objectives. First, it provides direction to the courts.

In Michigan there was extensive litigation around whether or not the issue of threshold compliance was a question of law which a judge would determine or a question of fact to be determined by the trier of fact, or the jury. By reserving this question to judges, Ontario can avoid a lot of the need for that extensive litigation, and along with that we can reduce the uncertainty, the expense and the risk of inconsistent verdicts that would otherwise result.

Second, I do not think questions of threshold compliance are usually ever perfectly clear-cut. They are almost always mixed questions of fact and law. In that case, in every trial where a jury notice had been served, this question would have to be reserved for the jury's consideration. That means that the trial would have to go right through to its conclusion before this fundamental question could be answered.

I think that is putting the plaintiff through an unnecessary hurdle. It is very expensive and time-consuming and it frustrates one of the legislation's intentions, which is to reduce the amount of litigation. Placing the issue of threshold compliance in the hands of the judiciary is hoped to result in more consistent verdicts across the province than you might otherwise expect if juries in various locales were actually doing the determination.

Finally, a decision on threshold compliance can be appealed. In fact, that is how the definitions will be worked out and become consistent across the province.

Next, I would like to discuss the bill's treatment of joint tortfeasors. These provisions are also found on page 30, section 231a. The normal rule with respect to joint tortfeasors is that they are jointly and severally liable. If one defendant were found even one per cent to blame for an accident, then that defendant, in law, would be responsible for paying 100 per cent of the damages.

The OMPP, as you will recall, protects owners and occupants of automobiles from liability. That creates a protected class of defendant, you might say. That might create an incentive for plaintiffs who are not seriously injured, who would not meet the threshold, to find some unprotected party somewhere to join them in the lawsuit, a municipality, for example, which it could be alleged did not properly salt a road. If

you could prove that that had even a one per cent factor in the accident, then that municipality would have to pay the entire damages at trial, because remember, the driver, the occupants and the owner of the automobile are protected.

Examples of unprotected parties come to mind fairly readily. Primarily they would be municipalities, manufacturers or repairers of automobiles. To preserve these other tortfeasors as close as is possible to their current position—that is, not to expose them to a mountain of litigation and to paying the full claim in cases that fall below the threshold and yet to still leave them liable for their own negligence—the OMPP operates to create a new rule. If the municipality or the automobile manufacturer were five per cent to blame for the accident, five per cent at fault, the judge would assess damages to the plaintiff as if the protected party's share of blame was also being considered. Then five per cent of those damages would be payable by the municipality or the auto manufacturer.

Another feature of the bill that I have been asked to speak to, and it is one that was referred to earlier, is the collateral source rule. As Mr Abols indicated, this rule provides that judges not take into account collateral sources of benefits when making an award for damages.

For example, if a person earned \$50,000 a year and was injured in an accident and was off work for one year, assume that he receives \$30,000 from his disability insurer and \$10,000 from his automobile insurer; he received \$40,000 of the \$50,000 he lost. A judge, in making the tort award, would give him the full \$50,000. In this example, the loss of \$50,000 in income would trigger a \$90,000 recovery. When you consider that the OMPP benefit is tax-free, that is considerable overcompensation.

This double recovery, as it is termed, has been criticized as being wasteful, resulting as it does in overcompensating, and indeed in some cases as acting as a disincentive for some victims to seek rehabilitation or return to work. Many thoughtful commentators, including Mr Justice Osborne, have urged this rule's abolition.

In fact, section 231b achieves that goal by requiring judges to take these income replacement and other first-party benefits into account by deducting them from the tort award otherwise due. This eliminates double recovery.

Sick leave benefits, however, are not treated the same as other types of benefits. They will only be deducted from the tort award if they are actually received. This exception prevents people from being forced by the OMPP to use up

accumulated sick leave benefits in the event of an automobile accident. Old-age security benefits also will not be factored at all into the tort award.

The bill also provides that persons making collateral source payments have no right to recover their payments from the tort fees or their insurer after a successful tort action. This follows Mr Justice Osborne's recommendation. He found that there was relatively little of this sort of activity, known as subrogation, taking place currently and that it was costly and inefficient. As Mr Abols indicated, collateral sources will be deducted in respect of all causes of action arising after 23 October 1989.

Mr Abols also described for you the direct compensation for the property damage feature of the legislation. I do not propose to reiterate Mr Abols' comments or to go into any detail explaining how it works. To recapitulate, essentially what the provision provides is that when two automobiles insured by Ontario insurers are involved in an accident in Ontario, each owner claims against his own third-party liability coverage. In essence, your own insurer stands in the shoes of the third party for the purposes of this claim.

To determine the degree of fault when you and your insurer are having these negotiations, recourse will be made to fault determination rules that will be prescribed by government. These rules are essentially a codification of the Highway Traffic Act and the common law—the decisions that have resolved from those provisions. This way, we will have a consistent set of rules in place across the province.

One potential drawback of the direct compensation scheme is that it may reduce the incentive for people to report accidents. Remember, it pays you to the extent that you were not at fault. Your own insurer is like the third party's insurer. If you were 100 per cent at fault for the accident and did not have collision insurance, you would receive nothing from your own insurer, just as you would receive nothing today. You would have no incentive whatsoever to report that accident.

It is important, however, that these sorts of data be collected: first, so that rates industry-wide can be based on accurate and reliable statistics; second, and this is an important part of the OMPP, so that bad drivers, people who cause accidents, can be identified and their premiums can be adjusted accordingly. Bad drivers do pay more under this plan.

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Why was the move to direct compensation undertaken? First, and I think this is one of the

more important reasons, for simplicity. In the vast majority of cases, the consumer will now only have to deal with one insurance company. You do not go to one for accident benefits and then fight with another to get your car fixed.

That leads into a second key point. Today, if somebody runs into me and I want my car fixed, I deal with his insurance company and it is an adversarial relationship. In the future, under direct compensation I am dealing with my own insurance company. There will be a customer and company relationship established. As Mr Wilbee indicated, we are also going to have a beefed-up regulator to make sure that this attitude changes quickly and that consumers are treated very fairly throughout this process.

Third, direct compensation encourages insurers to be more cost-conscious. It makes them have efficient adjusting and examination and claim settlement practices. Right now if I get in an accident and it is somebody else's fault, my insurer will probably fix my car under my collision coverage, because that is fast, and then hand the bill over to the other insurer. It is like a cost-plus contract. You know that when you do something and you are going to present the bill to somebody else, you are probably not going to be as scrupulous in controlling your costs as you would otherwise be.

Fourth, the use of a prescribed fault determination rule ensures that consumers get fair and consistent treatment. As I indicated earlier, the same rules will be applied in all situations across the province. Consumers may disagree, though, with the result that the determination rules would indicate because the case may be unusual or whatever. They do have the right to challenge that. They can go through the judicial system and have the liability question resolved.

Finally, direct compensation cuts down on fraudulent claims. Today, if there is an accident and a car is damaged, it is the other insurance company, a company that does not know you at all, that you negotiate with that pays to fix your car. British Columbia has done a study where damaged vehicles go through a succession of fraudulent accidents and they involve fraudulent repair shops and the same damage is ostensibly fixed several times. Under the direct compensation system you know you are insured and you know the vehicle, you know the record, and that sort of fraudulent abuse would not be possible.

That concludes my presentation. Thank you.

The Chair: Next, I believe, is Ms Burton.

Ms Oddie Munro: Do you want us to hold our questions?

The Chair: Yes, hold the questions until the end. That was what we had determined at the beginning.

Ms Burton: Please turn to page 14 in the summary you have been given that outlines the remarks that I would like to make about the accident benefits. Mr Ferraro has in fact outlined the levels to you, but I would like to go into a little more detail than he did and point out exactly when they will be available.

The no-fault accident benefits which will be available to persons suffering injuries in auto accidents are set out in the draft no-fault benefit schedule, as it is called. This is authorized under section 232 of the bill, found on page 31. I believe you have received a copy of this draft regulation, which is dated 9 November, if you would like to consult it as we are going through it.

What exactly are no-fault benefits? They are amounts of money which are payable by the insurer of a vehicle, generally without regard to the fault of drivers or pedestrians in accidents. They are paid upfront whether a court action results or not. They are paid for any injury—physical, mental or psychological—or death in any incident which involves a vehicle, whether directly or indirectly. This phrase, which is used in the bill, simply means that where a vehicle strikes a hydro pole which then strikes a person on the sidewalk, that is considered to be an incident to which these no-fault benefits would apply, the pedestrian having been struck indirectly rather than directly by the automobile.

Which insurer pays the benefits? This is found in subsection 232(2), on page 32 of the bill. If the injured person or his or her spouse has an auto policy in the family or is a dependant of that person—"dependant" is defined as one who is principally dependent on the insured person; in other words, more than 50 per cent of his income comes from that person—and whether the injured person is inside or outside of a car, his own insurer pays the no-fault benefits to him if he has an auto policy in the family. If an occupant of a vehicle or an injured pedestrian has no such policy in his family, the insurer of the vehicle in which he is riding or which strikes him pays the no-fault benefits to him. If the vehicle in which he is riding or which strikes him is not itself insured, has no insurance which attaches to it, then the insurer of any other vehicle involved in the incident, if there is another insured vehicle in the incident, pays the no-fault benefits and the injured person in that instance has the right to choose which insurer he will seek the accident

benefits from. If none of the vehicles involved in the incident—if it is a single-car accident and the vehicle is uninsured and it hits a pedestrian—then that pedestrian can seek his no-fault benefits from the motor vehicle accident claims fund.

Who exactly obtains the benefits; who is eligible to obtain no-fault benefits? These rules are found in the draft schedule, section 2(1), found on page 3 of the draft regulations. Where accidents occur inside Ontario, occupants of vehicles which are insured in Ontario or any pedestrian a vehicle strikes obtains the benefits from the insurers that I have just outlined. Again, in accidents in Ontario, if a person is named in an insurance policy in Ontario and his or her spouse or dependants are in any other automobile anywhere in North America or are injured as pedestrians, they recover.

Accidents which are outside Ontario, which happen anywhere in North America outside Ontario except for Quebec, and I will deal with Quebec in a moment, if they are Ontario residents riding in an automobile registered and insured in Ontario—for example, I have driven my family to Florida. If I get into an accident in Florida, I get the no-fault benefits from my Ontario insurer because I am an Ontario resident. If I am a named insured under a policy here and my spouse and my dependants are injured anywhere in North America, even if they are at fault, they recover, as I mentioned, accident benefits from their insurer in Ontario. Pedestrians or occupants of vehicles outside Ontario who are residents of other jurisdictions other than Ontario recover under the laws of their jurisdictions.

Accidents which occur in Quebec are a little different, because there is an interprovincial agreement with Quebec, which also has a no-fault insurance plan. These are dealt with in the draft schedule, part 5 on page 14 of the draft. Ontario residents essentially can elect to take Ontario or Quebec level of benefits and these are paid by the Ontario insurer to the person who is injured in Quebec if they are residents of Ontario. There are some differences in the levels of benefits and a person can choose which he prefers to take. There are minor exceptions to these rules which I have just outlined, but I will deal with them a little later.

What benefits can be obtained? The first category is medical and rehabilitation payments and payments for the long-term care of injured persons. These are found in the draft sections 6 to 9 on pages 5 to 7. As Mr Ferraro has pointed out, these are greatly increased. I will just run through

both the proposed level and the former level of benefits for your information.

For medical and rehabilitation care of an injured person there is \$500,000 for each person injured for necessary medical and other treatment, for rehabilitation and retraining of all types in order to get them back on their feet and into the workforce again as soon as possible, for transportation to treatment, which Mr Justice Osborne said was unfairly eliminated from the old benefits, for home renovations required if an injured person requires them, etc. The former level was \$25,000. These will be payable for a 10-year period following the accident or up to a 20-year period if a child is injured and needs ongoing prostheses, etc, as he or she grows. Under the old benefits this was only available for a four-year period.

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An entirely new benefit, as I mentioned, is one for long-term care. Because certain individuals who are less seriously injured are not going to be able to sue under the new system, there is a no-fault benefit for long-term care of persons who require it. Again, up to \$500,000 is available for this type of care in the home for professional care, for all expenses incurred even beyond the 10-year period that I mentioned above, and income lost by a family member. If a spouse, for example, wants to stay home from work to look after an injured family member, that lost income can be covered under this long-term care benefit.

Deducted from these medical and rehabilitation and long-term care benefits are any amounts payable under other insurance policies or plans such as OHIP. If OHIP pays a medical expense, then the auto insurer is not responsible for paying for it.

Amounts that are payable on a person's death, or funeral expenses, are found in the draft schedule, sections 10 and 11, on pages 7 and 8. Up to \$3,000 is available for funeral expenses for a deceased person—the former level was \$1,000—\$25,000 is payable upon the death of an individual or his or her spouse, and again the spouse has been more widely defined so as to match the new definition in the Family Law Act, 1986—the former level for this benefit was \$10,000 instead of \$25,000—and \$10,000 is payable to each dependant of a deceased person or his or her spouse. When the parent dies, each dependant gets \$10,000. The former level was \$2,000. In order to qualify for the amounts payable on death, the death must occur within six months of the accident or within three years if the

person has been continuously disabled since the date of the accident.

Weekly income replacement benefits is the next category of benefit that is available under the new schedule at increased rates from the former schedule. These are found on pages 9 to 14 of the draft which you have. If employed persons of any age, or those who have worked for any six months of the last 12 months as long as it amounts to a six-month period, are unable to work within two years of the accident, they obtain from the no-fault insurer either \$450 a week—the former level was \$140—or 80 per cent of their gross salary up to \$450, tax-free—I think it is very important to stress that these benefits are available tax-free, because then it is different from your regular income that you receive from your employer—for a three-year period, formerly two years, or for life if the person remains totally disabled for life.

Non-income-earners, and this is a new benefit under this draft regulation, of any age over the age of 16 will be able to obtain \$185 per week, again tax-free, for a three-year period or for life if they remain totally disabled. This benefit was not available under the former schedule C.

Child care benefits also are new. If the care giver is disabled and is obtaining the non-income-earner benefit, he or she may obtain \$50 per week per child up to a maximum of \$200 per week. Again, this benefit was not available before.

Deducted from these income replacement benefits are three things: any amounts obtained from any employment after the accident—if I am able to go back to work for a while, my employment income is deducted from this essentially income replacement benefit—any other benefits available—if I do have an income replacement plan at work, for example, it would pay before the auto insurer would pay—and any sick leave benefits, if received. As Mr Graham has mentioned, this plan does not force an injured person to seek sick leave benefits prior to the auto insurer being responsible for the income replacement. If a person chooses to take them or is forced to take them by other rules, then they are deducted. However, they are not deducted automatically. No benefits are available for income replacement under this plan if the injured person is entitled to workers' compensation benefits.

There are exceptions to these income replacement benefits. It is useful to point out first that everyone injured receives the medical and rehabilitation no-fault benefit and the death and

the funeral benefits, where required, so that he is rehabilitated and his family does not suffer from his injuries any more than is necessary.

However, there is no weekly income replacement benefit available for a driver where that driver is convicted of an alcohol-related offence, where the driver failed to buy insurance for the vehicle, where the driver, again, is unqualified to drive, where he is excluded under that vehicle's policy—as has been mentioned, that is a new feature of this act and a driver can be excluded under a vehicle's policy—and where the driver drives without the owner's consent or fails to fully inform the insurer about the risk. However, passengers who did not know that the car was driven without the owner's consent or that the owner had failed to notify the insurer of any material change in risk, etc, do get the no-fault benefits, including the income replacement.

If you would turn to page 16, there are some examples of how these benefits top up other benefits that are available. In the first example, in the box on page 16, the injured person has a disability program at his place of employment. If the injured person makes \$1,000 a week, for example, and the employment disability program must pay 50 per cent of his income, that amounts to \$500 a week. The person is then entitled under the OMPP to 80 per cent of his gross salary, or \$800 a week, so he obtains the \$500 from his disability plan and the OMPP would pay \$300 a week to top up, essentially, that disability program and raise the amount to 80 per cent of the person's gross salary. Again, the \$300 is available tax-free.

In the second example, the person has a private medical plan. It pays \$25 a day for special home care visits. However, the costs of the home care visits incurred by the individual amount to \$75 per day. The person would obtain the \$25 from the medical plan and \$50 from the no-fault insurer.

How is a claim processed? A person who is injured must give notice of claim to the insurance company within 30 days and then submit proof of claim within 90 days of the accident; that is, if he is able to do so. The insurer may require a certificate of the claimant's medical practitioner in order to commence the benefits. Mr Justice Osborne recommended that in these cases the injured person be given the benefit of the doubt, and therefore it is only the claimant's medical adviser who may certify the problem and start the benefits flowing. In the former system it used to be both the claimant's medical adviser and the insurance company's adviser who agreed that the

benefits were due and payable before the benefits started. In this system only the claimant's medical practitioner is required to certify that the benefits are necessary and then the insurer must pay.

Also, the insurance company has a reasonable right to a medical examination conducted by a physician or a chiropractor before it continues to pay the benefits. If two years down the road after starting to receive benefits the insurer doubts whether I am still disabled, then it has a right to ask for a medical examination by a physician or a chiropractor before it must continue to pay. That is found on page 16 in section 21.

The insurer must pay the claim for everything except the weekly benefits within 30 days of the proof of claim being submitted and, for the weekly income replacement benefit, within 10 days of the proof of claim. This used to be 30 days, so that the income replacement benefits start flowing to the injured person faster than they used to. This is section 22 on page 16 of the draft.

All necessary medical and rehabilitation payments are to be paid pending disputes over entitlement. In other words, if my insurer says to me after I am injured, "I don't think you're entitled to these benefits," the insurer still must pay them until I go to mediation or arbitration on the point. If any dispute does arise over which insurer must pay the benefits if there is a multicar accident and the injured person chooses to go after one insurer and not the other, if those two insurers get into a debate about who must pay the benefits, then the insurer primarily liable must pay until the dispute is resolved.

Weekly benefits are called weekly benefits because they are calculated weekly, but they are payable every two weeks. If a payment is late, there is an interest penalty of two per cent per month on the late payment. There are further penalties that will be available at arbitration, which has been mentioned and on which Mr Wells will elaborate further. There is also, as Ms Cottle suggested earlier, an offence under the Insurance Act in the very worst cases for failure

to comply with regulations, which this will be under the Insurance Act.

If the payment is disputed or refused, an insured person, an injured person, has an automatic access to mediation under this plan—this is found in section 65 of the bill itself, section 242a of the act, on page 35—or can go to arbitration or to a court if mediation fails. Again, this is found in section 65 of the bill, section 242c of the act, on page 36.

When will the no-fault benefits plan be effective? Contracts of auto insurance which are now in force are deemed to include these new benefits when the bill comes into effect. The changeover will occur on proclamation. Those who have had an accident before that date and are already receiving no-fault benefits will continue to receive them at the former level. This is found in section 39 of the bill, subsections 201(2) and (3) of the act, on pages 22 and 23.

Notices of the new benefits that will be available will be sent to existing policyholders 30 days before they are in force. This is required by the bill's section 47, section 208a of the act, on page 25.

This concludes my presentation. Thank you.

The Chair: Thank you. Mr Wells, I should probably warn you that one of two things are going to happen: We will either have a bell saying that we are finished or we will have a five-minute bell saying that we have five minutes to return to the House to vote. So if we leave in the beginning of your presentation, I hope you understand that, and we will come back after routine proceedings.

Mr Ferraro: If I may be so bold, I am just wondering whether we should wait. We are at the disposal of the committee, but Mr Wells is the last presenter. Do you want to wait until after lunch?

The Chair: If we can do that after routine proceedings, which will be anywhere between 3:00 and 3:30, why do we not shoot for around 3:30 and we will go from there?

The committee recessed at 1154.

AFTERNOON SITTING

The committee resumed at 1535 in room 228.

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to see a quorum.

Mr Wells: I am sure you are pleased to know I am the last presenter of the day.

I am here to talk about alternative dispute resolution, or to use the short form, ADR, which is a very important component of Bill 68. The ADR mechanism is designed to provide fast delivery of necessary benefits to insured persons and to make sure that disputes are settled on a timely basis.

It is fundamental that there be a mechanism to ensure that disputes are settled quickly. The bill contains tight deadlines. Some benefits are continued even if there is a dispute remaining between parties, and the accident benefits advisory committee and the medical and rehabilitation advisory panel will assist the commission and the director of arbitration in ensuring that qualified arbitrators and expert advisers are available across the province.

The system is designed to be more informal than a court setting and to provide more information to insureds about their rights to benefits. It will also detect unfair practices and allow for appropriate remedies to be imposed.

Having given you that brief overview, I am going to discuss what ADR is, who is going to provide it, where they are going to provide it and how it is going to be provided.

unless you are at war, you generally resolve your disputes in one of three ways: The first is negotiation, either face-to-face or through intermediaries, such as lawyers; the second is mediation, where an impartial, neutral party, who has no decision-making power, assists the parties who have a dispute in reaching some mutually acceptable solution to their problem; third, there is adjudication, where a neutral third party hands down a decision which is binding, and that person could be an arbitrator or a judge.

Mr Ferraro: Is that like a divorce?

Mr Wells: Well, ADR is used in a number of contexts. A prime example is labour law, but others include family law, environmental law and commercial law. It can be very effective when it is used in the right context, and it is used in resolving insurance disputes here in Ontario and in other jurisdictions on a voluntary basis.

The ADR mechanism in the bill is a complete code governing an insured's entitlement to accident benefits and the quantum of those benefits. The system is designed to be simpler than going to court, as I mentioned, to deliver benefits as quickly as possible and to keep insureds informed of their rights that they have to accident benefits.

We receive a number of complaints in our office from consumers about accident benefits under the current system, and there has been independent confirmation of that by Mr Justice Osborne in his report on automobile insurance, and that automobile insurers are not very good at delivering no-fault benefits.

Under the new system this is going to change so the consumers will know what they are entitled to and also know how to go about getting what they are entitled to.

In designing the system we looked at numerous factors and we have designed a model which is similar in part to that in New York, which seemed to work quite well in ensuring that consumers get the benefits to which they are entitled.

We are going to turn now to the scheme of the bill. A person designated as director of arbitrations, as you heard before from Mr Wilbee, is appointed pursuant to section 6 of the bill. It is on page 4. The director of arbitrations is a member of the commission and the powers of the director interact with those of the commissioner.

An example of this interaction is the choice of arbitrators. The minister is required to appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators. The accident benefits committee also advises the commission concerning procedures with respect to arbitrations and how they are carried out and it can advise on any other matter that the commissioner or minister may refer to it.

Once the advisory committee has made recommendations concerning qualified arbitrators, the commissioner establishes a roster of candidates and then it is up to the director to appoint arbitrators from that roster. This roster will provide a pool of qualified people from various backgrounds and from various locations from which the director may choose.

In addition, it is the commissioner who appoints persons to act as mediators, but it is up

to the director to ensure that they carry out their functions properly.

The commission is also responsible for appointing a medical and rehabilitation advisory panel to assist and advise the director and arbitrators. Thus, if the director or an arbitrator has a requirement for assistance from a person who knows about head injuries or psychological disorders or orthopaedics, the advisory panel is there to assist.

The director and arbitrators have exclusive jurisdiction to determine all questions of fact and law before them. They can subpoena witnesses and examine persons on oath.

Disputes with respect to entitlement to no-fault benefits are resolved in accordance with sections 242a to 242e of the bill, and that is on page 35. Together with the no-fault benefit schedule and the rules of procedures, which are to be prescribed, that will constitute a complete code with respect to dispute resolution over no-fault benefits.

Under the proposed system there can be no limitation on a party's right to mediate, litigate or appeal. Any provision to the contrary is void, except, of course, where the parties are settling.

In addition, where an insurer or insured is represented at a proceeding, a representative has to be authorized to bind the party he or she represents. In other words, if you are going to the party, you have to be prepared to dance.

The process starts by either the insured or the insurer referring a matter in dispute to a mediator. Mediation is a prerequisite to arbitration. A simple application is filed with the commission and the director is responsible for ensuring that a mediator is appointed promptly.

Section 242b sets up the basic mediation procedure. The mediator does not decide the issues in dispute; rather, he or she attempts to get the parties to the dispute to settle the issues among themselves. The mediator is a neutral, independent party.

If mediation fails, then the mediator will set out the last offer of the parties in a notice of failure of mediation. It should be noted that if mediation fails, an insurer is required to pay no-fault benefits in accordance with the last offer of settlement it made before the failure of mediation, unless there is an agreement or an order to the contrary.

If a dispute remains after mediation, an insured person has a choice of either going to court or referring the matter to arbitration. Insurers have no such choice. It is up to the insured person to determine the next forum.

If an insured chooses to arbitrate rather than go to court with respect to a dispute, the person files an application with the commission and again the director is required to ensure that an arbitrator is appointed promptly.

The arbitrator determines all issues and disputes and the arbitration is conducted in accordance with the procedures and within the time limits set out in the regulations. The arbitrator, through the director, may obtain advice with respect to medical questions from the medical and rehabilitation advisory panel, and it should be noted that unless the insured person consents, a report made by an adviser is private except for the purpose of settling a claim.

The bill also provides that where an insurer is unreasonable in withholding or delaying payments, "The arbitrator, in addition to awarding the benefits and interest...shall"—that is the wording of the bill—"award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest...at the rate of two per cent per month." That is found in subsection 242d(10) of the bill.

The next subsection, subsection 242d(11), may look innocuous, but it is important. It provides that an arbitrator may award to the insured person such expenses incurred with respect to an arbitration proceeding as may be prescribed in the regulations, to the maximum set out in those regulations. I will discuss what is anticipated to be in the regulations a bit later, but it is important to note that arbitrators do have the power to determine expenses and it is expected they will do it.

Arbitration orders are filed with the Supreme Court and are enforceable in the same way as a judgement of the court. Since this is a new scheme for resolving accident benefit disputes, the Arbitrations Act does not apply in this situation.

There may be people who are dissatisfied with an order of an arbitrator, in which case they can appeal that order to the director. The director can determine the appeal on the record or by way of rehearing all the issues or partly on the record and partly by way of rehearing. The director can confirm, vary or set aside the order of the arbitrator.

Where there is a matter of importance that goes beyond the dispute between the parties, an example perhaps being a definition that might affect all drivers in Ontario, the director can permit persons to make submissions to the director even though they are not parties to the

particular arbitration. These interveners can make submissions on issues of law.

In addition, the director has the option of stating a case to the Divisional Court on a question of law where he or she feels that the matter is a matter of public importance.

One of the key functions of the director is to review all arbitration orders, both for consistency and reasonability. Where the director finds that an arbitration, or an appeal from an arbitration, has revealed unfair or deceptive acts and practices, the director can recommend to the superintendent of insurance that the superintendent look into the business practices of that insurer.

The ADR code requires that certain regulations and rules and procedures be put in place and there is additional regulation-making power introduced in the bill to allow prescribing of rules of procedure and setting time limits. A regulation can be made prescribing expenses that can be awarded to insured persons and fees to be paid by insurers. We can anticipate that there will be a fee schedule for payment of various things, rules of procedure, rules around the use of evidence, examination of parties and witnesses, the use of experts and advisers and other general matters related to the conduct of the proceedings. The regulations, the forms and rules of procedure will be as simple and as clear as possible.

It should be emphasized that the expenses of arbitration will be borne by insurance companies, not their clients, the drivers of Ontario. Insurers will be charged for each arbitration in which they are involved. Therefore, it is clearly in their interest to pay legitimate benefits to claimants on a timely basis.

The no-fault benefit schedule is currently drafted. It calls for payment by an insurer of benefits within a very tight time frame. In some cases, such as the payment of necessary medical expenses, benefits must be paid whether or not the insurer disputes the insured's rights to claim these benefits.

Ontario is a large province. Mediation and arbitration services must be available to insured persons no matter where they live. That means the roster of arbitrators and the panel of medical advisers must be decentralized to meet these needs.

As you can see, Bill 68 recognizes the need for the quick delivery of no-fault benefits by the speedy resolution of any disputes which may arise, and really, the purpose of ADR is to get people back on their feet, to give them the resources they need in the interim while they do

that, and if they have a lawsuit to give them the benefits they need to stay the course while they are in litigation, which can take a long time to complete.

With that, I thank you for your kind attention. That ends my formal presentation.

1550

The Chair: Thank you, Mr Wells. Mr Simpson, do you have anything in terms of closing remarks?

Mr Simpson: No; thank you, Mr Chairman.

The Chair: Okay. I have a list of questioners on the presentations that we have heard this morning.

Mr Sola: I would like to go to page 4 of the remarks by the parliamentary assistant. At the top of the page he says that there were 203,000 automobile accidents and 121,000 injuries reported in 1987 and that bodily injury claims last year totalled \$1.8 billion. Does that \$1.8 billion apply to the 121,000 of 1987 or is that a 1988 figure?

Mr Ferraro: That is a 1988 figure, I understand. I stand to be corrected, but I believe the \$1.8 billion was last year's figure and that the accumulated amount of injuries was from 1987-88.

Mr Sola: So that \$1.8 billion would not apply to the 121,000.

Mr Ferraro: No.

Mr Sola: That would be a different figure.

Mr Ferraro: Yes, it would. In fact, I think it is safe to say that in all probability the 121,000 figure would be higher.

Mr Sola: Under the new deterrents that we are going to introduce, has any projection been made backward as to what that figure would have been in 1987 had we had these rules in place?

Mr Ferraro: Not to my knowledge, but maybe the deputy or one of the staff could answer.

Mr Simpson: No.

Mr Sola: Again, from another angle then, have we tried to see what the cost of those 121,000 injuries would have been under this proposed no-fault system with the \$450-a-week payout?

Mr Ferraro: I cannot answer that. Maybe one of the staff can, Mr Sola.

Ms Parrish: I am not entirely sure if I am responding to the question that you are asking, but I think what you are saying is that if the Ontario motorist protection plan were in place

now, would we be paying out \$1.8 billion in tort awards?

Mr Sola: Yes. Can we apply the proposed rules back two years against the figures we have got here to see whether we would have saved money or whether it would have cost us more? We keep continually hearing that this plan is a boon to the insurance companies and I would like to see how much they would have paid out had this plan been in effect when these injuries occurred.

Ms Parrish: That would be a very speculative exercise, to be very frank, because you would have to go back and look at each kind of injury and see, for example, how much recovery they would have experienced under the no-fault accident benefits. Then you would have to look at how many of these cases would have crossed the threshold, which would involve evaluating each one of the cases to determine what element of the threshold they would have met. So it would be a very speculative exercise.

We do know, for instance, that out of the 120,000-odd accidents that occur, in Ontario 25,000 lawsuits are filed. That gives you some idea of the proportion of injuries that ultimately result in a lawsuit. About 25,000 new lawsuits a year are filed.

The other thing is that you have a bit of a timing problem, because one of the major differences between a no-fault system and a tort system is that there is a much faster payout. It is very difficult to say what time period that \$1.8 billion related to, so you would have a problem in the sense that you would have to factor in the fact that the \$1.8 billion that was paid out in any given year would probably pertain to actions that had occurred in the previous four or five years whereas in a no-fault system the majority of the payments get paid out as they are incurred, very quickly. It is very difficult to do those kinds of comparisons.

Mr Sola: Okay, just one more question. On the accident benefits on page 16, it says,

"The insurer may on reasonable notice require a physical or mental examination of the insured person by a duly qualified medical practitioner or chiropractor."

What I am suggesting is, what if opinions differ between the personal physician of the injured person and this third-person type of medical examiner, the removed, independent medical examiner? How would you resolve that?

Ms Parrish: The initial payments have to be paid on the certification of the insured person's doctor. If there is a subsequent re-evaluation and

there is a dispute and the insured and the insurer cannot come to any agreement, then they have the mediation options and the arbitration options. In the end, the arbitrator would decide whether or not the various positions of the physicians were reasonable.

Mr Sola: So there would not be a third doctor involved. If the two doctors could not get together, you would ask for an opinion of a third.

The Chair: It might be useful to talk about how the current system works versus what is being proposed. I think maybe that is where Mr Sola is coming from.

Ms Parrish: Under the current system the insurance company requires examination by its own physician, and that means that many individuals cannot even get through the first initial payment period. Under the new system it is certification by your own physician.

However, the insurance company does have the right subsequently to ask for a medical evaluation. If as a result of that medical evaluation they decide that they do not feel that you, for example, are unable to go to work or they do not believe you need this rehabilitation treatment or whatever, then they have to issue you a statement indicating why it is they do not agree with your physician and what they intend to do, whether they intend to reduce your payments or whatever.

When that happens, you have the right to mediation and arbitration. In the end, if it went through the entire system, the arbitrator would decide.

The arbitrator does have the ability to order an independent medical examination. So the arbitrator could say: "Okay, I've heard from Doctor X and Doctor Y. This is a very specialized kind of injury. I need the expert advice of an orthopaedic specialist." The individual is examined by that person and that advice comes forward to the arbitrator, but in the end it is the arbitrator who adjudicates the dispute.

Mr Runciman: I am sort of all over the map here, and I made a few notes here of perhaps questions related to different witnesses.

I forget who specifically talked about threshold, but I know that when we have heard the minister talking about threshold and using the figure of 90 per cent, suggesting that 90 per cent of innocent accident victims will not be able to pass the threshold, I am wondering where that 90 per cent comes from. How was that arrived at?

The Chair: I think that was Mr Graham.

Mr Graham: Yes. In reviewing the board's inquiry into no-fault automobile insurance over the spring, and I guess it went into the early summer, it found, in its opinion, that the Michigan threshold probably allowed 15 per cent of bodily injury claimants to proceed through into the tort system. We feel that this threshold is stricter than the Michigan threshold. It was a design assumption that it would probably allow five to 10 per cent of claimants through into the tort system.

Mr Runciman: So you are saying that 90 to 95 per cent would be perhaps a more accurate use of the figures?

Mr Graham: At this point it is quite speculative, and it is more useful to think in ranges. I think the range would probably be 85 to 95. It would be in that range.

Mr Runciman: I have not reviewed Osborne, but I thought that Osborne looked at a no-fault plan, a threshold plan, that was a less restrictive threshold than the one you have introduced and that he was looking at a 92 or 93 per cent figure. Of course, we have heard some testimony from others who have looked at your threshold and suggest that the figure of people being unable to pass it could be in the neighbourhood of 96 or 97 per cent. I guess if we use the 95 per cent as a top figure from you, perhaps you are not all that far apart in terms of the other people we are hearing from.

1600

Ms Parrish: I would just note that in terms of Mr Justice Osborne, when he looked at Michigan, he looked at it during a period of some transition. As you probably know, because I know you are quite familiar with this whole area, the Michigan courts changed their minds on the severity of the Michigan threshold at various stages.

At various stages the Michigan threshold was very stringent, maybe running at 92 per cent, 93 per cent or 95 per cent but recently has been interpreted in a different way and currently is probably running at somewhere around 84 per cent or 85 per cent. That may be why Mr Justice Osborne made certain findings at certain times on which the board later made slightly different findings.

Mr Runciman: But in a sense you really are being speculative. You do not know what is going to happen in terms of the threshold. There is no way of developing some sort of model that you can determine. Is there no way of carrying out actuarial studies or anything along those lines

that can give you a more accurate determination of just how many will be able to pass the threshold? Is that not possible? Are we just going to have to find out through experience?

Ms Parrish: I think we have given you the range we think it is likely to fall in and we have explained to you the different factors that have gone into different assumptions. To do actuarial assumptions, the actuaries will make various assumptions based on the same factors we have given you, because in the end, the courts will make certain determinations that may affect the range.

Mr Runciman: Talking about studies as well, I am kind of curious—I know we have heard arguments made on both sides of the issue—with respect to the impact this kind of plan will have on highway traffic safety. It is obviously a concern of the government, with the introduction of new initiatives it has brought in, in terms of additional highway OPP officers, etc. I am just wondering, as a ministry, what have you done in respect to studies to determine what kind of impact there will be on highway traffic safety?

Mr Ferraro: Can I try to respond to that? Essentially, there are three points, I guess, that the government considered in that regard. In direct relation to the number of accidents, there is the argument that has been made that if you do away with tort or a substantial portion of tort, indeed the number of accidents will increase. I suggest to you, Mr Runciman, that that debate probably will be a subjective one between men and women long after you and I are gone.

Mr Runciman: Could it be between men and men and women and women, not necessarily between men and women?

Mr Ferraro: Probably. Indeed, if the tort were so effective, then from one standpoint the argument probably could be made that the number of accidents should have gone down in recent years, and indeed it has not.

If you take the other side, the second point I would make is that if there is a value to having tort or increased access to tort as a deterrent, then I think it is fair to say that in serious cases, and certainly in cases of death, that portion of tort remains so that there will be some deterrence in that regard.

I guess the third thing I would want to say on behalf of the ministry and the government is that notwithstanding all the hypotheticals about tort as a deterrent to bad driving and accidents and so forth, we believe that the comprehensive approach we are taking with increased fines—as you

know, tripling the fines, and \$15 million, I think, is the cost for adding 115 OPP officers and increased supervision and all the rest of it—has a deterrent effect and that that deterrence on the highway will alleviate to a significant degree the number of accidents on our highways. Mind you, the Via Rail cancellation did not help the matter, but that is another issue for another day.

Mr Runciman: I gather from that answer that there is a significant degree of wishful thinking involved in this approach.

Mr Ferraro: There is no question that the history will prove this out one way or the other.

Mr Runciman: In respect to highway traffic accidents in the tort system, I am just drawing on memory, but I think that over the past number of years there has been a marked decrease in highway traffic fatalities. Again, I do not have those statistics at my fingertips.

The Chair: We could probably get those figures from the Ministry of Transportation.

Mr Runciman: I am sure we will.

The Chair: And maybe a research, if we could kind of—

Mr Ferraro: It may be helpful too, if I may in response to Mr Runciman's question, that often the comparison is made between Quebec and Ontario. Indeed, Quebec has, as you know, a pure no-fault system, and the argument that was made when Quebec came out with this thing was that the number of accidents would go crazy. Staff can prove me out, but I think the charts will show that essentially, even on a per capita basis, the number of accidents in that system has not changed any degree at all.

Mr Runciman: Just for the record, we have a study that was made available to us that shows quite the opposite. In fact, if you translate the Quebec figures to the Ontario environment, it could result in an increase of approximately 100 fatalities on the highways per year. Anyway, that sort of thing will be coming out during the course of the hearings.

Mr Ferraro: Could Ms Parrish comment? I just want to make sure I am right in what I said.

Ms Parrish: You did ask us, Mr Runciman, whether or not we had considered various studies. As you know, there have been a great many studies on the Quebec experience, which is probably the sort of best microcosm to look at, and we have looked very extensively at the Quebec experience.

What the Quebec experience showed was that when the régime came in in Quebec, because they

had only one insurance company, they decided to simply flat-rate all drivers. When they flat-rated all drivers, that reduced the premiums for very bad drivers. As a result, more bad drivers were on the road and, as a result, accidents went up.

That is a point that the Ontario Automobile Insurance Board made in its findings as well about pure no-fault systems, that you can get more bad drivers on the road because the cost of insurance can be very low. These drivers get back on the road. That did happen in Quebec and then the Quebec government moved to introduce surcharging and variable rating based on driver conduct.

That is why variable rating and surcharging for bad drivers has remained an aspect of the Ontario system. There does seem to be, from the Quebec studies and from the board studies and so on, a problem if you do not continue to differentiate between drivers in terms of insurance premiums.

But the studies that we have looked at seem to show there is no direct correlation between the tort incentive and driving, but there does seem to be a correlation between flat-rating or how you differentiate between good and bad drivers. That appears to be the conclusion, but I think Mr Ferraro is quite right in saying that the deterrent value of tort is a very hotly debated academic issue. You know, we do not have a perfect sort of laboratory in which we can practise to see what really is happening or what factor is causing what.

Mr Runciman: I am sure we can all find studies that will support our own position, and that is what we will all be doing.

Ms Parrish: I think on that point you are absolutely right.

The Chair: Mr Runciman, are you done?

Mr Runciman: No, I have a couple more, if you do not mind. I would like to talk a bit about the strength in centralized regulatory authority. Just out of curiosity, what is the automobile insurance board doing these days? How are they putting in their time?

Mr Simpson: I can answer that, and I am pleased to do so. The auto insurance board, of course, is continuing on with its monitoring of the automobile insurance market, monitoring of the existing legislation under which it works, and assisting us. We have members here. Of course, Ms Cottle is here working with our team on the policy. The lawyers and so on are deeply involved in this joint process with the ministry. The automobile insurance board is carrying on

with the staff it has, doing the job it was put in place to do.

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They are also preparing for, in connection with this particular legislation, a review of the rate proposals that might be brought forward in the future, pursuant to this legislation. There is a great deal of preparatory work that goes on in connection with that.

Mr Runciman: What about the terms of this flow sheet? You have the superintendent, the board and the new functions going in the new commission. How is that going to impact on the ministry? Are you going to utilize the same office space? Is it going to have much of an impact on the number of new employees? Is it going to have much of an impact on your budget? How do you see it?

Mr Simpson: As Mr Wilbee, I think, indicated this morning, that eventually will be decided and reviewed by the Management Board of Cabinet. Our minister is the chairman of that, as well. We have not put forward any proposals yet, even from a planning point of view, as to the number of staff. We have been looking at various ways, obviously, to organize this thing, but as Mr Wilbee indicated this morning, I think it is fair to say there are, in the right-hand box on page 4, some important new functions that in fact do provide things to consumers, to insurers, including the arbitration, the market conduct and so on.

Out of that, I expect that those new functions will have to come in considerations of staff. There could be additional staff or there may be redeployment of existing staff in the offices of the commissioner of insurance and the superintendent.

Mr Runciman: I guess I am a little bit surprised at that response. I recognize there are new functions and new responsibilities, but you are not prepared to be more specific. I know when the minister introduced this legislation, certainly in the public comments he made, he was looking at the passage of this before Christmas and implementation in March. Here we are in December and you are saying you really have not looked at the numbers. You really do not know what you are going to require or how you are going to pull all this together and get it up and running. It strikes me as a little surprising.

Mr Ferraro: Can I add a little to that? If I may, I appreciate Mr Runciman's concern. There is no question that when you get into something of this nature, and I do not want to be repetitive, with the new functions we envisage

this commission having, there is a period of flux, if you will, until we get this thing up and running, quite frankly.

Mr Runciman: You guys have been fluxing for years on auto insurance.

Mr Ferraro: We do not know what degree of staffing we are going to need and so on and so forth.

I guess the other thing I want to say is that we are mindful of the bureaucracy, but we are also mindful of our responsibilities to the consumers and indeed to the insurance industry out there. Mr Simpson has some comments he might want to make.

In conclusion, I would remind the committee that to the degree that this committee will be set up and to the degree of bureaucracy required and all the rest of it, it is a self-financing entity from the standpoint that the insurance industry will pay for it, and inevitably the consumer, which I am sure Mr Runciman will be quick to tell everybody. But there is at least the distinction that that sector will pay for it.

Mr Simpson, I do not know if you have anything to add.

Mr Simpson: I guess I just wanted to respond very briefly to the surprise comment, because if I left the impression that there are not people available to tackle those new areas, that is not the case. All I am saying, and what I would indicate, is that you build up to these things. In fact, in the arbitration process itself, the cases that would materialize for that process materialize basically a number of days after you proclaim the bill. So there is a very logical building up to this particular effort and that is being taken fully into account.

What I am saying to you is that in advance of the passage of the bill I dare say you would be just as critical if we were off and about doing a number of things that in fact were ahead of the game in that respect. So I think we are right on track in terms of getting ready.

Mr Runciman: I will be quiet for a while, Mr Chairman. I would like to have another opportunity.

The Chair: Okay, no problem.

Mr Runciman: I do not want to monopolize, but I wanted to say to Mr Simpson before that I assume this would have been going to Management Board in January if the legislation had passed as originally scheduled. I was not suggesting that you go ahead and hire bodies and that sort of thing. You are right; I would have been critical. But I think there should be a plan

there and you should have a pretty good idea of what you are going to need and require at this stage of the game. That is all I am saying.

Mr Kormos: First, from reading Osborne, my understanding is that the Insurance Bureau of Canada, the insurance industry in Canada or in Ontario, speaking for Ontario, wants a threshold system, but that all it ever asked for was the Michigan threshold. We have acknowledged that the threshold that has been authored is more onerous. It is going to exclude more people from any compensatory system for pain and suffering. How in the name of goodness could the government have drafted a threshold that was more onerous than what the insurance industry itself even wanted? I mean, how can that be rationalized?

The Chair: Mr Ferraro is probably going to take a stab at that.

Mr Kormos: I bet you he is, but these people look really eager to answer that, because they were right there. Mr Ferraro, like the rest, is just—the country would run well without elected people but not without these kinds of folk. I bet these folks can nail it right on the head.

Mr Ferraro: I share one thing with Mr Kormos. It often has been said that it is amazing how well the province of Ontario is run, notwithstanding the politicians. But I want to earn my \$9,000 somehow, at least in part.

Mr Kormos: We will talk about that later this afternoon.

Mr Ferraro: First of all, let me say that it is indeed very difficult to compare Michigan to Ontario, to compare a state in the United States to some degree to a province in Canada that is different. There are distinct differences in the way the judiciary is elected. We have an OHIP system, a national health insurance plan, and they do not. The benefits that are paid by Michigan and the ones we are proposing differ, ie, the amount of income replacement I think in Michigan, and someone can correct me if I am wrong, would only last for three years, where in our case it could go on indefinitely. So I think, in fairness, it is difficult to compare the two.

To get to the nub of your question—and that is, why did we come up with this system of threshold?—quite frankly, Mr Kormos, and you have probably heard the minister say this on occasion, what we were looking for after looking at the Ontario situation, after analysing Slater, Osborne, the OAIB, our discussions with just about every group you can imagine, was a balance.

Some refer to it as a tradeoff, and I guess there is some legality to choosing those words, but quite frankly we had to choose a balance, and as it directly related to the amount of money, if there were an infinite amount of money available in the pocketbooks of consumers, of the six million drivers in Ontario, then I suspect we would not have a threshold whatsoever. The reality, of course, is that there is not an infinite amount. So the balance we had was to deal with essentially the serious and not-so-serious, if you will; serious and permanent and death and the not-so-serious.

You have heard the speech, that most accidents are the result of a moment's inattention as opposed to criminal negligence. We tried to get away from the system of reparation, if you will, to some degree. But to address the cost specifically, we had to limit the number of court cases. We did that by looking at the individuals and families of the individuals and saying, "Okay, in the not-so-serious cases, it is the intent, I think, of the government and certainly of society in general to put that individual and family back in the position they were in before the accident."

That is why we have done all the things that were put into the bill, and the committee now is considering rehabilitation and income and all the rest of it. We want that individual and family to get back to living the way they were accustomed. In cases where there is serious and permanent injury, or even death, then indeed we felt the logic was there to retain tort. That individual or that individual's family can never be made whole again. I guess that is the distinction, getting somebody and that person's family back into the position they were in before as opposed to never having that opportunity. It is that determination, that balance we were looking for. If money were not a problem, I suggest we would not even be sitting here talking about it. But it is.

The Chair: Maybe Ms Parrish would like to add something to that. No? Mr Kormos.

Mr Kormos: I backed off because I thought for a minute he was trying to pull my leg.

Mr Ferraro: No, only if you want me to help you take your boots off.

Mr Kormos: I am old enough to remember the old vaudeville act of Professor Irwin Corey. I tell you, he has nothing on the parliamentary assistant when it comes down to obfuscation.

Another matter that is of some concern is that what we have here really is a double threshold system, because there is a threshold to litigate and then there is a threshold that you have to pass

before you get to no-fault. That is obvious in a reading of section 13 of the draft regulations.

Now you can calculate how many of the people will not pass the threshold when it comes to compensation for pain and suffering and be at 85, 90, 95 per cent. We know that is the vast majority of people. What are your calculations as to the people who will not pass the threshold for no-fault?

The Chair: I did not think we had one, quite frankly.

Ms Parrish: I apologize, Mr Chairman. The section—

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The Chair: I think he lost most of the committee on that one as well. When you say there is a threshold for no-fault, are you talking about those individuals who are impaired drivers and will not receive income, or what are we talking about?

Mr Kormos: No, I am talking about the threshold that is written into section 13.

The Chair: Of the bill.

Mr Ferraro: Of the regulations.

Ms Parrish: Of the regulations. On page 11, I think, is the accident benefit scale?

Mr Kormos: Yes, and that is to say that the only people who receive no-fault benefits are people who, as a result of the accident, are unable to perform substantially all of their activities. What that is is a threshold. Once again, it is a threshold that is written in the same sort of imprecise language that has been criticized in your primary threshold, because it requires that there be an inability to perform substantially all of their activities.

What that means is that not every injured person will receive no-fault benefits. It clearly has to mean that; it has to be intended to mean that. What I am asking you to consider is what your calculations are as to the number of people who will not pass that threshold. You have not been able to calculate the number of people who will not be able to pass your primary threshold.

Ms Parrish: I think we did give you a range on the initial threshold. I guess, and I am not trying to avoid your question, but I think section 13 is designed to be equivalent to the sections that give benefits to working persons. So if you are an employed person, it says essentially if you are unable to work as a result of your accident, you get this compensation.

You then have a class of people who are not employed at the time of the accident, but they are

still entitled to compensation. So then you have to say, "What test is there going to be for them?" You cannot say, "If they cannot work," because they were not working. So you have to have some other appropriate test. The test is if they were unable to do what they did before they were working, whether they were unable to go to school, they were unable to care for their children, they were unable to do their household activities, shopping, whatever, they were unable to participate in sports or whatever activities they were doing. That is the intention of the section.

If you view this as creating a very high barrier designed to sort of exclude people, I have to say in all honesty that is not the intention. We certainly would be willing to look at the language. It is really intended to be an equivalent to these people not working or not being able to work because they have been injured and therefore getting this benefit. This is intended to be for people who do not have paid employment. As a result of their injury, they are unable to do whatever they did before, and that is what we are trying to get at. I think that Imants Abols might—

Mr Ferraro: I think we are compelled to say, without equivocation, that there is absolutely no intent to have two thresholds. The only threshold is the one—

Mr Abols: I would just observe that the test that you see here is essentially the test you have in schedule C now of the Insurance Act. If it is any sort of threshold, it is just basically an evidentiary threshold. You have to prove that you did not go to work. It is not a threshold which says that you have to be severely maimed or seriously injured. It is simply saying, get a doctor's certificate showing that you cannot do your job and as from today you will get, in the case of income benefits, your weekly income benefits. The intention was that it would work the same way with respect to those people.

Ms Parrish: You would probably get a certificate saying, for example, "Ms Smith is unable to attend her classes at the university" or "Mr Jones is unable to do his daily shopping and pursue his activities" or "Mrs Jones is unable to look after her children because of this injury." That is what it is intended to do, but we are certainly willing to look at the language.

The Chair: Just for my clarification, the benefits that we are talking about that Mr Kormos was identifying in terms of a threshold were criteria to determine the employed nature of the individual. For an individual who was not employed, student, housewife, whatever, there is a basic benefit of \$185, correct?

Ms Parrish: That is right.

The Chair: Then depending on your employment and your range, you can go to a maximum of \$450 a week, right?

Ms Parrish: Yes, sir.

The Chair: Okay. Thank you.

Mr Kormos: That is if that unemployed person, housewife or student meets the threshold contained in section 13.

Mr Ferraro: No, there is no threshold.

The Chair: As a clarification, is there a threshold to meet in order to receive the minimum of \$185?

Mr Kormos: Of course. That is what is written there. That is what I have been trying to tell you, Mr Chairman.

The Chair: I am trying to get an answer for you, Mr Kormos.

Mr Ferraro: No, that is not a threshold, I suggest to you, as indicated by Ms Parrish, Mr Kormos. It is just a statement of fact.

Mr Kormos: If it looks like a duck, if it walks like a duck, if it quacks like a duck, then one is pretty capable of assuming that it is a duck. That is going to be the subject matter, I have no doubt, of a lot of discussion.

Mr Ferraro: I think you are right.

Mr Kormos: The parliamentary assistant talked about the tort system and its inadequacies. Really, when you look at this legislation from one perspective, it is really not insurance law reform; it is tort law reform, because what it is saying is that in the instance of motor vehicle accidents, our traditional tort law will no longer apply.

If the government has that view about tort law, why does it not take the bull by at least one horn and say: "Not only are we going to abolish tort law when it comes to motor vehicle accidents, but we are also going to abolish tort law because of its inadequacies and ineffectiveness when it comes to slips and falls." We are going to abolish tort law when it comes down to the general negligence inherent in my shooting off my firearm when I know I should not be shooting it off because I know there are other hunters there.

Why does the government not really take the bull by the horn and say: "Look, we're going to tell the world we do not believe in tort law. This has nothing to do with pandering to the interests of the auto insurance industry. We are going to abolish it across the board"? Why is that approach or perspective not being taken, or is tort

law good for some injured people but not good for other injured people?

Mr Ferraro: In response to that, I am not sure I ever used the word "inadequate," but I certainly referred in my discussion of tort to the balance that the government and the minister and the ministry were trying to reach in controlling costs. I apologize for being repetitive, but I think it is necessary.

There is no question that the cost of tort, as I am sure we will all agree, is a significant cost to the industry and has a direct bearing on the amount of premiums that the consumers pay. If we were not concerned about how much premiums were for the consumers of Ontario, then we would not be touching the insurance issue. But that is a reality.

We had to make that tradeoff, if you will, and we felt that was a balanced approach to controlling costs and protecting the rights, and keeping tort in place, of people who, to continue along that line, suffered death in the family or had serious and permanent physical injury. I also indicated that in our view, if you accept the argument that tort is a deterrent to accidents, then at least we have retained that.

There is no doubt, Mr Kormos, that the insurance companies would have loved us to bring in an absolutely pure no-fault system. They would have loved us to do that. But we felt under the circumstances that the balanced approach would be beneficial to controlling those costs. Quite frankly, I guess time will decide. There is a place for courts, and we have stated that that place is in the case of serious and permanent physical injury.

The Chair: I would just like to offer some advice, guidance or direction. We have ministry people here. They presented the technical side of it. The last little exchange maybe dealt with the philosophical side of it. I would be more than happy to indulge in that, but we may want to take advantage of the individuals who are sitting around the table.

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Mr Kormos: Two more of the briefest of questions, and I will address this to the civil service people here.

You heard the parliamentary assistant say that the ministry took into consideration the Slater report, the Osborne report and the reports of the OAIB when it designed Bill 68, this threshold no-fault scheme. In view of the fact that Slater, Osborne and OAIB all rejected threshold to greater and lesser degrees, but Osborne certainly

said, "No way, not fair, inappropriate," how can—

Mr J. B. Nixon: Did he say, "No fault, no way"?

Mr Kormos: No, because there is nothing new about that. We will get to that next.

Mr Furlong: I thought you said this was a short question.

Mr Kormos: It would be if it were not for the interruptions from the member from somewhere in the greater Toronto area.

Mr J. B. Nixon: Where you wish you were.

Mr Kormos: Are you kidding? I have the best of both worlds. I can live twice as good on half the salary, and I do.

The Chair: Would you like to seek an answer from the technical people?

Mr Kormos: Yes. What is your interpretation of Osborne, for instance? What pages can you technical people direct me to? Where can you read between the lines that Osborne endorsed anything even close to what these guys are saying they could arrive at as a result of reading Osborne?

Mr Graham: I guess I will start with Mr Justice Osborne's report. If you look at the report, and if you look at the entire Ontario motorist protection plan package, not just the bill but the benefits and the offensive on speeders, reckless drivers and highway safety, I am sure you will find that the vast majority of what Mr Justice Osborne recommended is included in this package—broker disclosure, consumer enforcement, increased powers for the superintendent and so forth.

The collateral source rule was another area that Mr Justice Osborne said needed to be reformed, and it is addressed in this legislation.

There is another area that Mr Justice Osborne commented on and that the OMPP follows. It is a key area, I suppose. He recommended private delivery of automobile insurance. The package accepts and recognizes that.

The main area, as you pointed out, is that he did not recommend that at that time Ontario proceed to a no-fault or to a threshold no-fault insurance scheme. Mr Justice Osborne was relying on data that indicated at that time that accident frequency and severity—that the costs driving premiums—were moderating, if not falling, through 1985-86.

Subsequently, before the rate board in its rate hearings over the fall and winter of last year, I think the evidence was fairly conclusive that this did not happen; in fact, rather than costs falling or

moderating, they were accelerating. If Mr Justice Osborne—this is, I suppose, a speculative comment to some degree—had to make the same assessment today, I am not sure he would come to the same conclusion.

The rate board had three forms of no-fault insurance referred to it, and its conclusions, I think fairly clearly, were that the models referred to it would not provide the savings that the consumers in the marketplace wanted. I think that the government listened to the board, because this product is built on the rate-board findings and is designed to provide greater savings than the models that had been submitted to it would have provided.

Mr Kormos: This will be my last question for today. You are talking about product, and that is interesting, because in Mr Ferraro's speech—I do not know who wrote it, but he or she must have worked for Procter and Gamble, because "new," "new," "new" is all we hear. I thought this was a Tide commercial. This is a new product; they are talking about the new no-fault provisions. I do not know a whole lot about this stuff, but I am told that we have had no-fault provisions in our insurance system here in the province for at least a decade now, that basically all these guys have come up with is bringing the figures up to current standards and throwing in a little bit of sweetener; but that, by and large, there is nothing new about the no-fault, that the general thrust—

Mr Ferraro: Then why are you opposing it?

Mr Kormos: —of this no-fault system is not new at all; it is as old as the bloody hills. To use the word "new" is something of a real misnomer. Can you explain why they would keep throwing that word "new" in?

Mr Ferraro: It is the same way as New Democrats use it, because democrats have been around for centuries.

Mr Graham: As you correctly point out, the benefit levels for some benefits that have existed for quite a while have been extensively enhanced. Other benefits, though, are new. The long-term care benefit is one that I think stands out. It never existed in Ontario no-fault legislation before and I am not aware of any other legislation or any other no-fault package that includes a benefit that would provide for care in the home. So that certainly is new.

But I think you have to go beyond the actual package of benefits and look at the product—I am sorry to use that word—the comprehensive package.

Mr Kormos: Go ahead, use it, because the government wants you to phrase it that way.

Mr Graham: What is new are tough regulations that will require insurance companies to deliver those benefits promptly. What is new is a regulatory body that is going to be empowered to investigate and enforce, and it is given a lot more teeth to do that. I think what is also new, and this is a critical point that came out of Mr Justice Osborne's report and several others, is the ADR system that Mr Wells was describing, because that will help resolve any sort—well, not any sort—it will help resolve disputes arising out of the delivery of accident benefits quickly and expeditiously. That is new.

Mr Kormos: Thank you. That is big.

Mr Ferraro: He works for Procter and Gamble.

Mr Kormos: Yes.

The Vice-Chair: Is that it, Mr Kormos?

Mr Kormos: Yes. My old beagle has got more God-damned teeth than these, but I am sorry.

Ms Oddie Munro: I am taking a look at the definitions in the establishment of the no-fault principle and the definition of continuing injury which is physical in nature. I take it from listening to some of the definitions and interpretations of the accident benefits that you have made—at least I wonder if you can assure me—that you have assured yourself that you have included the psychological and the mental health interpretations so that the client, the purchaser of coverage, feels fairly confident that his definitions of trauma or his definitions of continuing recurring pain and injury are looked after. Is that true?

Mr Graham: Yes.

Ms Oddie Munro: The whole rehab field is made up of so many different kinds of professionals, and I gather those professionals will still be there under the guidance of this system. The guy on the street, I think, is concerned—not so simply concerned, but he does not have to be looking for something that we can observe as being physical, but that “physical” in your definition also includes the trauma, the psychological, the recurrence. Is that true?

Mr Graham: Yes, each—

Ms Oddie Munro: I can see that it is in here, and I will be asking the question again, but I am just—

Mr Graham: Yes, perhaps I could respond then.

Each of the empowering provisions, each of the sections that give benefits purposefully include the language “physical, psychological or mental injury.” The “psychological and mental” is new, and it was put into this package specifically to address those sorts of concerns.

I think something that further corroborates that intention—the old accident benefits schedule, schedule C, defined an insured person for the purposes of those benefits as somebody who was an occupant in an automobile or a pedestrian who was struck by an automobile. If you think about that word “struck,” requiring striking to occur, that is a very physical concept, and in fact that language was used in the consultation draft. We did have consultation input. People pointed out that that might create a situation where somebody who was a pedestrian and observed an accident and suffered a psychological trauma or a mental trauma would not fit in. That was totally unintentional.

So the 9 November draft reflects the true intention of the package. It takes out the concept of being struck and it says “suffers physical, psychological or mental injury as a result of an accident.” That is on page 3 of the regulation, in the definitions, clause 2(1)(e). That is an important change to highlight the intention of the regulation in that area.

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Mr Abols: I want to try to clarify one thing. You were referring to the threshold in the act. I wonder whether there is some confusion, because we are making provision for psychological and emotional injuries, but the no-fault benefits provide for those injuries. If that is your concern, then they are taken care of in the no-fault benefits regulation.

Ms Oddie Munro: That is right. In terms of any benefit, at whatever point, you are looking at every one of those considerations.

Mr Abols: Yes, under the schedule.

Ms Oddie Munro: Okay. Maybe that has really captured what I was trying to get at. It is hard to get away from meat chart kinds of accusations.

The Vice-Chair: Excuse me, Ms Oddie Munro. Can Mr Nixon have a supplementary on that point?

Ms Oddie Munro: Oh, do you? Maybe you can—

Mr J. B. Nixon: No, I just wanted to get that section again, that is all. The section that you referred to.

Mr Graham: It is page 3 of the regulation, clause 2(1)(e), "Insured person."

Mr J. B. Nixon: Got it.

Ms Oddie Munro: The other question then is: It is hard, it does not matter what field you are in, to move away from, to be burdened with, accusations of meat chart, whether it is in mental health or bodily payments back. In those instances of injury which are not serious, what kind of discretion will be used in the case in terms of awarding damages that would move a client away from that meat chart? So if you had an injury and you had damage to a hand, what other considerations will appear on his chart for settlement?

Ms Parrish: There is no meat chart in the legislation.

Ms Oddie Munro: No, but there is the accusation that you could be moving in that direction. When you are moving into a serious injury, you have the judicial determination, I gather, which would take a look at all factors. But when the client is purchasing coverage, when he receives payments of money or service in the home, something will have to be explained to him, and I am wondering how you are going to get around X number of dollars for psychological damage or X number of dollars because he lost a finger. How are you going to get around that? Otherwise I think we are going to go through the same criticism as with a complex system such as the Workers' Compensation Board and the reform that is going into that.

Ms Parrish: There is no system that says, "You've lost your finger; it's \$5,000." The way the system works is as follows: In the accident benefits schedule, people recover economic loss. For instance, I have a psychological trauma as a result of an accident or I have a physical injury, say I have broken my ankle. I cannot go to work or I cannot look after my children. I am paid 80 per cent of my salary or I am paid the child care allowance so that someone else can care for my children.

In addition to that, I am given the cost of my fibreglass cast or the medicine that I need or psychological counselling costs, transportation to these medical appointments and so on. That is all compensated for out of the accident schedule.

If I do in fact, for example, lose a finger, then I would have crossed the threshold and the judge would decide what my damages would be. The judge would not look at a schedule and say, "It's \$5,000." The judge would say: "Okay, what do you do with your finger? Do you play the piano?

Do you have a job that would involve manual dexterity? Are you"—what is the name of this baseball player who—

Mr Graham: Dave Stieb.

Ms Parrish: That is the problem with men, they always have these sports analogies which I do not understand. Anyway, if you are one of these people who do this, then the judge would decide, based on your personal characteristics. So it is not a meat chart; it is a subjective test.

Ms Oddie Munro: A functional test.

Ms Parrish: Under the threshold what they look at is your economic loss. How much money, how much salary did you lose because you were unable to go to work?

Ms Oddie Munro: It is above the threshold evaluation then.

Ms Parrish: There is no meat chart as there is, for example, in Quebec where they say, "Okay, if you lose your leg, it's this much."

The Vice-Chair: Ms Oddie Munro, if I may, because of time constraints, if you have one other question, could you just pose it? I have a couple of other people who would like to—

Ms Oddie Munro: If you are doing a functional evaluation, then I think that answers more than one question that I had, because functional evaluations are then involved in any rehab that you might want to do. I am very poor in wording my questions, but if that is part and parcel of it then it takes into account the physical, psychological and a whole bunch of other things.

Mr Furlong: A couple of questions in dealing with the ADR: I would be interested in somebody giving me some information as to the extent to which arbitrators have been used in the insurance industry, say, over the last year or two. I understand there was a major press story not too long ago, where plaintiff's counsel and defendant's counsel got together, appointed somebody at the Holiday Inn and they all went down and dealt with 30 or 40 cases in one day. But I am wondering, I would like to know who is going to be an arbitrator, who has the experience, what kind of criteria are you going to establish for someone to fit into that category.

Mr Wells: Yes, you are right. Under the auspices of the Insurance Bureau of Canada there was a mass settlement negotiation process that took place a while ago. I understand that they are going to be doing it again.

We have been discussing with various people in the arbitration field and mediation field the qualifications that are necessary, who can do the

training for those arbitrators and in fact the type of person who is appropriate to be an arbitrator or a mediator, because in fact the skill requirements are different for a mediator and an arbitrator. We have been looking into that. I do not know how much further you want me to take that.

Mr Furlong: Well, I guess I wanted to draw a comparison because it strikes me that—and I will now use labour disputes, dealing with arbitrators interpreting collective agreements—what has happened over the years is that the number of arbitrators, as they get known, there are some good ones and ones who are not so hot. What happens is everybody wants the good one, and these things then take a year, two years down the road to get resolved. I am concerned about that, which leads me to my second sort of question. Maybe you can comment on that.

You have some very different sections in here dealing with limitations. There is a limitation section dealing with threshold, there is a limitation section dealing with no-fault benefits, there is a limitation section in the schedule and all of these are a little different. Two years is consistent throughout, but in one case it says it is the minimum of two years and it can be more if the contract calls for that. In the other it says two years from the time that they stop paying, etc. I am wondering why the two years.

First of all, I suppose I am wondering why it is necessary at all, given the new type of system that we are going into and, second, why two years, why not six? I can see the arbitration process at some stage maybe doing some things that an individual is going to go by the time because he is not going to be involved with counsel, he may be doing this on his own. The whole idea that you need this protection after two years is not really one that I accept anyway. I am just wondering, why two, why not six?

Mr Wells: Two years is basically for studying the process and getting the process rolling. We felt the two years was sufficient. Certainly there are feedback loops where in fact you may start the process, it may end and you may start it again later on. So the two or six or whatever is really not that relevant in this situation.

Mr Furlong: But that is what I am saying. If it is not relevant, then why? To me, it puts a restriction on the process. If you are saying in one case that you must start the action within two years of the date that the insurance company stops paying you, you start. If you are talking about the benefits of no income in that section, for example, you are talking about somebody who is going to be not getting \$185 a week. They

are not going to start a major action before they finally get the nerve to go up and say, "They now owe me \$2,000 or \$3,000 or \$4,000." It would seem to me that they should be given some time to work into this. You are not going to start processes in court.¹⁶⁵⁰

I also have some difficulty where you say that you can start an arbitration process or a court process. I see them as different and distinct. As I say, it is not a major issue but it seems to me to be somewhat restrictive.

Ms Parrish: I guess the one thing I would say now is that all the limitation periods for no-fault benefits are very substantially increased over what they are now. It is now, I think, 30 days, so this increase to two years is very significant and is consistent with the limitation period for a claim in a tort action. It would seem unusual that you would have a longer period of time in which to commence a suit for the denial of an accident benefit than you would have to commence a suit for a tort claim.

What we have tried to do is treat them the same way. Frankly, we chose two years because that is the tort limitation period and it was desired to be as consistent as possible. There are the usual arguments about limitation periods, such as the issue of when the evidence becomes stale-dated, particularly because in auto accidents a lot of the evidence is in the hands of the police and those records are only retained for a certain period of time. So I think there is a desire to move these things through the system.

Usually the evidence is such that you can resolve the issue. It is not like some claims, for example, black lung disease or something in which there could be a very long period of time before you have any idea that the injury has occurred. So the argument is that two years is quite a reasonable period to know whether or not there is a cause of action or a problem involved. Certainly two years from the denial of claim is quite a long period for the individual to have decided that he is in disagreement.

Mr Furlong: I buy your argument if you are talking about threshold, but I do not buy it in the payment of the no-fault benefits.

Mr Ferraro: I think that is something that we could take a good look at as well, Mr Furlong, because I think there is some merit to what you are saying.

The Vice-Chair: Our final questioner will be Mr Runciman. I would ask you to be as brief as possible, please.

Mr Runciman: I do not mind that as long as the answers can be brief too, because I have a number of questions. I know it is a complicated issue, but this is perhaps our only opportunity to have officials of the ministry.

The Vice-Chair: I would ask that the answers be as brief as possible as well.

Mr Runciman: Ms Oddie Munro raised an interesting question with respect to the emotional and physical injuries, and I think it was Mr Graham who went on at length about the no-fault benefits. As I understand it, those kinds of injuries are prohibited from passing the threshold. You are only looking at physical injury. Is that not correct?

Mr Graham: No, that is not precisely true. The threshold would support a claim for a psychological or an emotional injury if there were a nexus between that disability and a physical symptom.

Mr Runciman: So there has to be a related physical symptom.

Mr Graham: Yes.

Mr Runciman: Could you give me an example other than, say, someone being confined to a wheelchair? Is there something—

Mr Graham: A head injury that resulted in a brain lesion, for example.

Ms Parrish: A head injury that resulted in intermittent depression, for instance. That is probably the best example. Someone has had a head injury and as a result of that injury he has had periods, which are likely to go on through his life, of intermittent depression and personality change. That is probably the best example of a psychological or mental cause with a physical nexus, physical nexus being the head injury.

Mr Runciman: This is something that is probably going to generate a lot of activity in the courts in terms of interpretations, I would assume. Certainly some of the arguments we have heard on the other side say that this is not really addressing some of the major concerns of groups that advocate on behalf of the handicapped and so on. They will be appearing before us.

I do not think Mr Kormos's question was answered adequately, in my view. That was when he talked about the insurance companies getting a better deal than they wanted. I would specifically like to know why the government—and perhaps this is political. If it is I will defer the question, because I do not want to hear Mr Ferraro again on this. I want to take advantage of the staff here. On the concessions made to the

insurance companies with respect to the tax on premiums in OHIP transfers, why were those undertaken?

Mr Graham: To answer the first part, where you intimated that the insurance companies got more than they were asking for, as a starting point I would like to say they were asking for pure no-fault insurance with absolutely no right to sue, and they certainly did not get that.

Mr Runciman: We can argue about that one all day.

Mr Graham: With respect to the premium tax and OHIP, that was not a gift to the insurance industry. That is something that was assessed against consumers, and the rate board, as it is evaluating the rates insurance companies are filing for this new product, specifically has requested or required companies to identify the effect of that reduction in tax and in OHIP.

I think perhaps the final justification would be that automobile insurance is one of the few products that I know of right off the spur of the moment, or the only one I can think of, that governments require people to buy. You must buy it. Driving has become such a factor of life that when the government mandates—

Mr Runciman: That is the sort of thing I do not want to hear.

Mr Graham: Okay.

Mr Runciman: I guess you have answered as best you can.

Mr J. B. Nixon: You mean you do not like the answer.

Mr Runciman: I have asked a specific question, I am looking for a specific answer and we have some time constraints. If Mr Nixon wants to agitate me, I am quite prepared to be agitated, I tell you.

I want to ask a couple of questions about the alternative dispute resolution process. During the testimony it was mentioned that when you go through this arbitration mediation exercise, the costs are going to be assumed by the insurance companies. Then Mr Ferraro made a reference to this being a self-financing entity. Regarding this system that is going to be established, are we saying that all of the costs for the operation of this dispute resolution bureaucracy are going to be covered by the insurance industry?

Mr Wells: Part of the infrastructure of the office of the director of arbitrations will be part of the insurance commission and subject to assessment. With respect to individual arbitrations in those things, those will be assessed individually against each particular company.

Mr Runciman: That was my understanding based on your testimony, but Mr Ferraro said it was a self-financing entity. That raised the doubt whether this was going to be completely covered by the insurance industry. So what you are saying, in effect, about the mediation arbitration portion of that is that there is going to be some payback or total payback in the insurance industry, but the operation of the body, if you will, will be covered through the ministry's budget.

Mr Wells: Right.

Mr Ferraro: If I misled you in any way, shape or form, I apologize. I thought your question was in reference to the insurance commission per se as opposed to the arbitration hearings.

Mr Runciman: Do you have any idea how this is going to work? I know you mentioned the New York situation and I know that is not quite comparable, as they have a different threshold. I do not know how much that will impact now. We are talking about six million drivers. Have you got any idea what you are going to meet here? Are you just sort of crossing your fingers and rushing ahead?

Mr Wells: No, we have looked at various jurisdictions, other jurisdictions around the province, and we have some rough figures. We think there are about 55,000 claims, about 10,000 to 15,000 of which would come to the insurance commission for mediation. We expect that about 60 per cent of those 10,000 to 15,000 per annum would be mediated successfully. Thereafter, the insureds would have to make the choice of whether they were going to arbitrate or go to court.

Mr Runciman: I remember all these glowing predictions about rent review. We have got a two- or three-year backlog and we are talking about speedy delivery of benefits, but I am very concerned about that. I am concerned about this whole damned plan, to be quite honest, but this is an element of it that seems to me to be a bit of a rat's nest, a horror story and perhaps an empire builder's dream. I am really concerned about this element of it and what it is going to mean in terms of the new employees and cost to the taxpayers of the province.

In any event, that is as much time as I will take up. The deputy wants to say something.

1700

Mr Simpson: Mr Runciman, in our looking at the various models in New York and elsewhere and trying to anticipate the situation in Ontario, I think that in terms of 10,000 as a preliminary

estimate that is a fairly cautious number. The number in New York is lower; the per cent is lower. The deadlines are so tight on the turnaround, and that is what we intend. We have said it has to be fast, to get those benefits out.

As you know, if you are going to plan for something like this you cannot afford right at the beginning to underprovide the capacity to get the job done. It is absolutely indispensable that this part of it, the mediation and arbitration, be done fast. That is why we were spending a great deal of time zeroing right in on what we have to be prepared to produce from day one.

Mr Runciman: I would like to make a request. At some point we are going to be meeting in January, etc, but when we talk about this—I respect what Mr Simpson is saying. I asked questions earlier about what this is going to mean in terms of the growth of the ministry, the additional bureaucracy and the estimates on cost. I think it is an important element.

We are talking about giving the consumers of this province a break in terms of rates, but if you take a look at the funds flowing back into the insurance industry, if you take a look at what this is going to cost the taxpayers additionally, if you take a look at what it is costing through workers' compensation, a whole host of things that will come out during testimony, I think we want to have all those facts before us.

Mr J. B. Nixon: I would like to follow up on one area Mr Runciman was exploring, but I certainly do not want to agitate him. My understanding is that the elimination of the three per cent premium tax will be monitored by that part of the insurance commission which is there to review rates, to ensure there is a reduction or elimination in the amount of three per cent of the premium charged to the consumer to ensure that the consumer obtains the benefit of the elimination of the premium tax. Am I right?

Ms Parrish: Yes.

Mr J. B. Nixon: Thank you.

Mr Kormos: I have this irresistible compulsion to point out that \$95 million is still going to be paid by virtually the very same people. If it is not paid by way of premiums to the insurance industry, it is going to be paid by way of other taxes, because the government is not cutting its budgets by \$95 million. Let's quit the sucking and blowing on this one.

The Vice-Chair: Thank you.

Mr J. B. Nixon: I obviously got Mr Kormos agitated.

Mr Kormos: He just woke me up.

Mr J. B. Nixon: It is nice to know I have such ability to wake you up. How long have you been sleeping?

The question is, how much is the premium tax generating for the province of Ontario right now?

Ms Parrish: It is \$95 million.

Mr J. B. Nixon: It is \$95 million. Thank you.

The Vice-Chair: I would like to thank the parliamentary assistant, the deputy minister and all of you who participated today to assist us in the briefing. It was very informative and I thank you for your efforts.

We are now going to begin discussion of the subcommittee report on Bill 68. As you are aware we will be meeting again on 8 January for five weeks, one of which will be a travel week. The clerk attended the subcommittee meeting. I would ask him to go through that for us.

Clerk of the Committee: On this package of documents, you will notice the first one has the subcommittee report. The subcommittee met this Tuesday and made a recommendation for the committee's consideration. Please read it carefully because these are directions to the clerk of what the committee wishes to do.

I am a bit surprised. I am not privy to the House leaders meetings, so I do not know if it is five weeks or four weeks.

Mr Kormos: Six.

Clerk of the Committee: Was it six weeks? You will have to excuse me. I will proceed with the documents. The second set of documents has two scenarios based upon what the committee has decided. If it wishes to have four weeks without any clause-by-clause, the first two pages of this document give you an idea how the logistics will be run. The second two pages are based upon the second scenario which the subcommittee recommended, that there be three weeks of hearings and one week for clause-by-clause. I will include in this an extra week at your request, which makes a total of five.

Mr J. B. Nixon: It is my understanding that there has been agreement among the House leaders that there would be an additional week of hearings to commence on 8 January in order that we can complete clause-by-clause within the five-week period. I understand Mr Runciman and Mr Kormos were concerned about the amount of time that would be available for hearings if we were to do clause-by-clause.

Mr Kormos: I can provide some clarification. When the subcommittee met for the first time, on 12 December of this week, I was concerned

because it had been indicated by Mr Pelissero, the chairman, among others—certainly not by me—that the agreement between the House leaders was that there would be a gross number of six weeks dedicated for hearings, that the weeks of 11 December and 18 December would count as two of those weeks and that of those two weeks only one day per week would be committed to committee hearings.

I raised that with my House leader by way of a letter in which I indicated that interpretation of the agreement was bullshit. I asked him to raise the matter one more time with the other House leaders, which I understand he did. Any of us within our respective caucuses understood there to be a gross amount of six weeks, and that one week consisted of four hearing days.

I appreciate that in terms of travel time it was agreed that it be two weeks, but that there not be a total number of eight hearing days but rather a total number of six hearing days.

The reason at this point for the added week was not to eradicate or alleviate concerns about the time involved in the clause-by-clause consideration; it was in fact to give effect to what was the original agreement, as compared to what some people understood on 12 December. I still have some concerns because we are being told that we are not meeting next week. I cannot understand that. We have only had one day this week.

Mr J. B. Nixon: It was by agreement of the subcommittee. You were there. You made that agreement.

Mr Kormos: If numbnuts would stop interrupting and let me finish, we are going to be spending a lot less time here.

Interjection: Have some class.

Mr Kormos: Class? Do not tell me about class. This is a no-class show.

The Vice-Chair: Mr Kormos has the floor at the moment.

Mr J. B. Nixon: Speak for yourself, Kormos. No one else can speak for you.

Mr Kormos: If the chair would like to maintain order, I invite her to do it. If not, we will let all hell break loose.

Mr J. B. Nixon: Yes, why not? Let's do it now rather than wait five weeks.

The Vice-Chair: Mr Nixon, Mr Kormos has the floor but perhaps the clerk might be able to provide some clarification for us.

Mr Kormos: Now listen, I am telling you that I am not here to argue the point; I am here to tell you what the issue is. The issue is that we

operated under the handicap, on the part of some people, of a misunderstanding of what the House leaders agreed to when we met on 12 December. I made it quite clear at that meeting that I did not accept the proposition that the weeks of 11 December and 18 December were to necessarily constitute hearing weeks, least of all that there was only to be one day per week.

I indicated at that time that my understanding of the House leaders' agreement was a gross number of six weeks, and that the two weeks dedicated to out-of-town hearings would be limited to a total of six days.

The Vice-Chair: At this point could I ask perhaps for some clarification from the clerk, now that you have stated what you understood the situation to be.

Clerk of the Committee: When we met, the discussion was on what constitutes two weeks. Because the Legislature meets, the committee can only meet one time a week, which is on Thursday. When the subcommittee realized that, it decided we should request a replacement day for 21 December, which is next week. However, because the subcommittee understood that the time would be constrained and the members' time needed to be used elsewhere, it was decided it would be fruitless for us to meet during that week. There was no discussion further than that on the extra week. It is my understanding today that the committee is receiving an extra week, which is news to me.

1710

The Vice-Chair: Mr Nixon, do you have anything further on this?

Mr J. B. Nixon: I was going to say that we all have different understandings of what took place, but the fact is that I think we also all understand that the House leaders have agreed there would be an additional week of hearings commencing 8 January. We all can say that we are responsible for it because we voted for it but it does not matter. What matters is that another week was allocated commencing 8 January. I think we can agree on that, can we not? Maybe? Nod if you agree; shake your head if you do not.

Mr Kormos: At least one more week was added.

Mr J. B. Nixon: That is right.

Clerk of the Committee: These recommendations are for your consideration. If you do agree with them, someone should move the motion to adopt them. If you do not agree with them, please specify which section. There are ten

of them and then you can debate them in the manner of a motion.

Mr J. B. Nixon: I would move approval of the report with the following amendments: That section 3 be amended to include the week of 8 January 8 to 12 January and so it would be five weeks. I would move elimination of section 6 because it is our clear understanding and expectation that clause-by-clause will be dealt with in the final week of the five weeks of the committee's hearings.

Mr Runciman: I want to comment on that. I would like us to preserve that option, if the committee feels near the end of this process that it might be more useful to do clause-by-clause in committee of the whole in the House and hear more witnesses—if we have a backlog of witnesses who wish to appear before us, that may be a more appropriate use of our time and do the nitty-gritty in the house in committee of the whole. I am just suggesting we leave that option open; that is all.

Mr J. B. Nixon: May I finish? That section 7 is okay, that section 8 is okay, stand as is, and that section 9 be amended to include an agreement that because the first week of hearings commences so early on 8 January, either the subcommittee or the whole committee select a number of witnesses, all of whom I think we could agree on and identify as having an interest in this matter, and call them to come before the committee during that first week.

Clerk of the Committee: Mr Nixon, could you assist me on this. If we are to begin on the week of 8 January, then the subcommittee should meet before that because it will require time for each individual to be notified if they agree.

Mr J. B. Nixon: I agree. I think either we can do that by subcommittee—if we can get consent now the subcommittee agreement will stand. I think we had better do it in committee here. Otherwise, we are not going to get it resolved because we are not meeting between now and then.

The Vice-Chair: Would it facilitate if I asked for a motion for the subcommittee to meet independently to make this decision?

Mr Runciman: Do you not have a motion on the floor?

Mr J. B. Nixon: I have a motion on the floor, yes.

The Vice-Chair: Okay. Have you accepted Mr Runciman's—

Mr J. B. Nixon: No, I am going to move my motion.

Mr Kormos: I move an amendment.

Mr J. B. Nixon: I moved amendments. Are you amending my amendments?

Mr Kormos: Yes, because it was sort of an omnibus amendment.

With respect to paragraph 7, I make this amendment because I see travel for six days to Sudbury, Thunder Bay, Ottawa, Windsor; it comes to four cities. It looks as if there are two days left for out-of-town hearings, so I am amending that amendment to include the communities of Kingston and Hamilton.

Interjection: I support that.

The Vice-Chair: You have at least one supporter.

Mr Kormos: The reason I am making that, of course, is that I think we are on common ground and everything that is before us suggests it is a case where the House leaders did agree on six days, a period of those six days constituting two weeks of out-of-town hearings. As I say, we have only four cities now; Hamilton and Kingston would seem to be ideal places to listen to submissions.

Mr J. B. Nixon: Let me ask just a question of clarification of the clerk. When you produced the tentative schedule, in terms of allocating days, what had you done?

Clerk of the Committee: I have not allocated anything to anyone. I simply took their names and put them on the list and that list will be shown to the committee, as you were suggesting, so it can choose, unless you approve of the—where is that? Where are we? There is a section here, number 9, which permits the subcommittee to choose key groups.

Could I please make a point? I think it is important for you to realize, Mr Kormos, that you do wish to travel six days. However, logistically you are going to be having a difficult time in the wintertime arranging for these trips, because the travel arrangement by the airlines is that we cannot go from Sudbury to Thunder Bay, we have to come to Toronto to go to Thunder Bay, so it is going to be physically impossible to make these trips. However, I just bring that to your attention.

Mr Kormos: I appreciate the clerk's eagerness to be of assistance, and I know that we can do it.

Clerk of the Committee: I am quite sure we can, but I am just telling you that maybe we could not.

Mr Kormos: And we will.

Mr Runciman: I think it is important that we do not try to do all this in one shot. Maybe we can go one day in, say, week 2, to Thunder Bay and one day in week 3 to Sudbury so that we are not going to exhaust ourselves.

Clerk of the Committee: No, no. If you look at the scenarios I proposed to you, you will notice that I have split up the trips for two different weeks.

Mr Runciman: I would like to alleviate your concern; that is all I am saying.

Mr Kormos: It could be done over three weeks using Sundays for travel days, and you can go from Ottawa to Kingston easily.

Clerk of the Committee: Oh, sure.

The Vice-Chair: As long as weather does not preclude that.

Clerk of the Committee: Yes. This is winter, and we live in Canada, not in Florida.

Mr Kormos: Somebody can share my parka with me.

The Vice-Chair: All right, if I may, I will go through each section independently.

Should section 1 carry? All in favour? Carried. Section 2, all in favour? Carried. Section 3?

Clerk of the Committee: There is the amendment there.

The Vice-Chair: There is an amendment to include January 8 through 12 to therefore have a complete five-week period. All in favour?

Mr J. B. Nixon: Are we voting on the amendment?

The Vice-Chair: Yes. I am sorry, on the amendment, all in favour? And section 3, as amended? Carried. Section 4?

Clerk of the Committee: In this case it would be two weeks in Toronto?

Mr Runciman: That is not going to preclude travel, is it?

Clerk of the Committee: No, nothing precludes travel.

The Vice-Chair: Okay, section 4, all in favour? Carried. Section 5?

Mr Kormos: This raises some concern, because it appears to fix what we very well may want to keep flexible. Among other things, when the subcommittee met on 12 December we talked about the need for flexibility, as I recall from the meeting, and the need possibly to include evening sittings, again depending upon the need, and the availability of facilities and of members of the committee, particularly when the clerk has so wisely arranged travel for a Sunday for

out-of-town hearings, for instance. When the travel is being done on Sunday and everybody is snug as a bug in his hotel room before 2 am, it would seem to me that to wait until 1:30 in the afternoon to give effect to hearings would be a waste of time, rather than starting properly in the morning when everybody else starts work.

The Vice-Chair: I will let the clerk respond to that.

1720

Clerk of the Committee: That was never the intention. If we are travelling on a Sunday, we will start at 9 o'clock in the morning on a Monday. The reason there is the afternoon here is that when we meet in Toronto, Mr Runciman has to come from Belleville and the other members are given the opportunity to arrive here early.

Mr Kormos: I understand, but the tariff, interestingly and wonderfully, provides for extra per diems for those people who use Sundays for travel and provides for accommodation expense for those people.

What we have got is a whole lot of hearings compressed into a horribly short period of time. I did not dictate that period of time; Mr Runciman and his party did not dictate that compressed period of time. That compressed period of time and that incredible number of people who want to make submissions are going to mean it is going to be a difficult five weeks, and what I am saying is, so be it. So that means that we are going to have to adjust, and I say that even on—

The Vice-Chair: Mr Kormos?

Mr Kormos: Oh, I am sorry.

The Vice-Chair: I was going to say that in view of your feelings, would you like to move an amendment to section 5, or a motion?

Mr Kormos: I move that section 5 be amended by deleting the first part, "Mondays at 1:30 pm to 5 pm," and then the reference to Tuesdays, Wednesdays and Thursdays, so that it reads, "the committee meet from 10 am to 12 noon, 2 to 5 and from 6:30 to 10 pm, as need be"—on all days. That is why the qualifier "as need be" is there.

The Vice-Chair: All in favour?

Mr J. B. Nixon: Any discussion on this?

The Vice-Chair: Any discussion?

Mr Runciman: The way I look at it, I do not mind that motion, or just taking number 5 out of there completely and leaving it up to the subcommittee to come in with some hours for us. I do not know if we have to have a restrictive motion in it at all.

Clerk of the Committee: Are you suggesting that on Mondays you meet from 10 am to 12 noon and 2 pm to 5 pm and the same every day, Mondays, Tuesdays, Wednesdays and Thursdays, including 6:30 every night, if need be?

Mr Kormos: Yes.

Clerk of the Committee: Thank you. Just so I understand.

Mr Runciman: I do have some trouble with that then.

Mr J. B. Nixon: Why do we not try to be as flexible as possible? We understand that committees sit from 10 am to 12 noon and 2 pm to 5 pm. That is the regime. No one is going to argue with that regime, and if we find that we need night sittings, the subcommittee will determine that.

The Vice-Chair: Is that acceptable to you, Mr Kormos?

Mr Kormos: In view of that understanding, I will withdraw that latter part of my amendment.

Mr Runciman: I have some problems with the Monday concept, as someone who has to travel a distance and someone who has a family. It is one thing to say, "You're going to get \$70 to come up here on a Sunday." Who the hell needs 70 bucks to give up a Sunday with his family? I do not.

Mr Kormos: Well, bring your kids.

Mr Runciman: My point is that it has been a tradition around here to give the Monday morning for travel for people from a distance to fly in from Ottawa or wherever and I would like to retain that tradition.

Mr J. B. Nixon: I would rather leave things flexible. Go with the traditional regime, which is, as you say, starting on Monday afternoon. Recognize that we have got a lot of people who want to hear us, and we have a time limit.

Mr Runciman: I agree with that.

Clerk of the Committee: Mr Kormos, based on what Mr Runciman said, are you willing to withdraw your motion and leave it as it is?

Mr Kormos: I will withdraw my motion in view of what I understand to be an understanding.

Clerk of the Committee: That there is flexibility when—

Mr J. B. Nixon: Just so your understanding is on the record.

Clerk of the Committee: Do I understand that when we know the number of people, if the night sittings are required, the subcommittee will meet to decide that?

Mr Runciman: And if we get down there to the crunch, if it looks like Monday mornings are going to be helpful, I am sure that most of us who travel will be prepared to make the sacrifice.

The Vice-Chair: The operative word in here is "flexible," to make maximum use of our time. Is that understood?

Mr Kormos: What it means is that somebody already suggested paragraph 5 should be rejected; deleted in its entirety.

The Vice-Chair: No, I would disagree. I am reading that it stays as is and perhaps with the addition of the word "flexible," to be kept as flexible as possible to maximize the use of our time. That is how I understand it.

Mr Kormos: Fair enough. But the whole thrust of this conversation was that we were going to rely on tradition, and—

The Vice-Chair: No, no. The word "flexible" is the operative word here, not tradition.

Mr J. B. Nixon: Wait a second. Could I try something?

The Vice-Chair: Why not?

Mr J. B. Nixon: Let me try something.

Mr Kormos: It is your weekend.

Mr J. B. Nixon: I am not going to propose Sunday hearings, but that the committee meet at traditional hours as are normally scheduled for committees of this Legislature, subject to the discretion of the subcommittee to acquire additional hours of sitting, as may be required.

The Vice-Chair: Okay?

Mr Kormos: I can live with that.

The Vice-Chair: Thank you.

Mr Kormos: Marginally.

The Vice-Chair: Recommendation 5, then, as stated by Mr Nixon? All in favour? Carried.

The Vice-Chair: Okay, recommendation 6, "That the committee utilize all four weeks for hearings," with the parentheses.

Mr J. B. Nixon: I move deletion or amendment of that.

The Vice-Chair: Okay.

Mr J. B. Nixon: I move that the committee utilize the first four weeks of hearings for public hearings and the fifth week for clause-by-clause review.

The Vice-Chair: All in favour?

Mr Runciman: I just want to say for the record that, again, I like the idea of flexibility, and that is what is being indicated, a willingness to be flexible.

Again, rather than making that decision right now, in December, if we find as we get near the end of this thing that we have a mile of people who want to come in here and say something to us, I think that as a committee we should have the option; we should not be limited by a motion here in December.

I personally have no problems with dealing with this clause-by-clause in committee of the whole. Why do we have to deal with it in committee?

The Vice-Chair: Do you want to make a motion to that effect?

Mr Runciman: I do not know why we need this thing in here at all.

Mr J. B. Nixon: Perhaps I can give an explanation. It is my view that we have been given a job to do, part of that job includes clause-by-clause review and we should do it. If the list of deputants becomes elongated, that is the purpose of being flexible on night hearings and Monday mornings and so on and so forth.

Ultimately, the decision has to be made to get on with the bill in clause-by-clause review. That is why I am moving that the fifth week be set aside for clause-by-clause review.

The Vice-Chair: Mr Kormos, did you have something further to add?

Mr Kormos: Yes. I am really troubled by seeing the Liberal members on this committee basically hamstringing themselves, paint themselves into a corner, because I am confident that when they see the incredible numbers of people who want to make submissions, it will then be the Liberal members who will be saying, "But we want more opportunities for the public to comment on this legislation." They are going to be saying, "We don't care what the New Democrats said and what the Tories said, we want to see more hearings permitting the public to talk."

Far be it from me to tell the Liberal members what to do, but it would seem to me to be prudent from their point of view to give themselves flexibility and that they might, as Mr Runciman suggested, basically delete section 6 so that there is indeed flexibility.

The only reason at this point for imposing the last week as clause-by-clause is to restrict, effectively, the amount of time available for public submissions, and the wiser thing would be to recognize that, among other things, there is committee of the whole available to us. There is nothing in the direction to the committee that

requires clause-by-clause consideration, in my view.

The Vice-Chair: Do not forget that in the previous section, number 5, we did ask for extra time by utilizing Sunday as a travel day and therefore gaining back Monday morning and evenings, as required.

Can I have a vote on Mr Nixon's amendment to section 6? All in favour? Opposed? Two? Carried.

The Vice-Chair: And recommendation 6, as amended? Opposed? Two? Carried.

The Vice-Chair: Okay, section 7. All in favour?

Clerk of the Committee: There is an amendment from Mr Kormos to include Kingston and Hamilton.

The Vice-Chair: I am sorry. Any discussion?

Mr J. B. Nixon: Are there other cities that we want to choose?

Clerk of the Committee: You have got six days for travel.

Mr J. B. Nixon: I know. Why go to Sudbury, why go to Thunder Bay, why go to Ottawa, why go to Windsor, why go to Kingston, why go to Hamilton? I can find you six centres that are just as good, I would think.

Clerk of the Committee: The reason they are there is that is what the subcommittee recommended. However, you can change it.

1730

Mr J. B. Nixon: That was based upon your suggestion that these are the traditional centres which the committees tour to, neither of which was Kingston or Hamilton. I am just wondering if there is any justification for any of these centres. I could give you six other centres. I am just wondering why these.

The Vice-Chair: I think, based on population, these perhaps make more sense in some instances.

Mr Kormos: Madam Chair, I can tell you why, and I am going to take this opportunity to do exactly that. It remains that there is a great deal of interest in this legislation indicated to me, and I believe to Mr Runciman, out of the community of Windsor and areas surrounding that; similarly in Ottawa and similarly, interestingly, in Sudbury and Thunder Bay.

Hamilton has a number of major organizations representing large numbers of people which have already expressed an interest in making submissions. Niagara Peninsula has a number of individuals, trade unions and organizations that

want to make submissions, and Hamilton would accommodate them. Kingston would encompass all of that north shore, if you will, a whole number of communities. They are communities that are focal points of the great interest in this legislation across the province. It is certainly my experience, and I understand it is Mr Runciman's as well.

Mr Runciman: I want to speak specifically about Kingston. I think having Ottawa as the only eastern Ontario destination is inappropriate. Kingston is certainly geographically central in that section of the province and can give opportunities for people from Belleville, Brockville and northern areas as well. I think what we want to accomplish here obviously is to give as many Ontarians as possible an opportunity to appear before our committee.

Mr J. B. Nixon: I am wondering why we do not choose London or somewhere like that that is halfway between Toronto and Windsor. People from the Hamilton area can choose either London or Toronto. It is again a major population centre and a major media centre.

The Vice-Chair: I think within reason they have been selected. They are traditional cities. We have had two additional ones included. Is there any further discussion at this point?

Mr J. B. Nixon: I was asking for that.

The Vice-Chair: You were asking for which?

Mr J. B. Nixon: Any reply to London? What do you think of London?

Mr Kormos: Although I have had complaints from London, I quite frankly cannot honestly say that there has been any indication of major sources of organized interest in the legislation. I am sure there is, but there has not been an indication of it.

Mr Runciman: I have not had much response. I know there are several organized groups in the Windsor area that have expressed an interest.

The Vice-Chair: Can I ask for a vote then on the amendment which includes Kingston and Hamilton? All in favour? Opposed? Defeated.

Then on the recommendation as stated, number 7, all in favour?

Mr Kormos: One moment. I would amend that, because the paragraph is a contradiction. It says "travel for six days" to four cities. Unless there is more than one day in each of those given cities, the books do not balance. So could that be amended by the addition of the words "and two other communities"?

The Vice-Chair: Mr Kormos, I think it was mentioned earlier that part of that is to accommodate travel time and weather conditions. I do not think we will get a city a day essentially.

Mr Kormos: Madam Chair, my understanding of the House leaders' agreement was that there would be six days of out-of-town hearings, and I call that six days of out-of-town hearings. My understanding of that is net. If we were snowmobiling, to Thunder Bay we could only do one community in those six days, but we are not; we are travelling high-tech.

Mr J. B. Nixon: I would suggest you do the amendment another way and I think we might have an agreement. There could be six days of hearings, if numbers warrant, in the cities of Sudbury, Thunder Bay, Ottawa and Windsor. That is what you are really trying to get at, I think.

Clerk of the Committee: Could I say something? If you say six days, that is a week and a half: four, and two days for the next week. You are removing it from your five weeks of hearings. However, if you count it as a day of travel, you can travel on a Saturday or Sunday, which is not included in your five weeks.

Mr J. B. Nixon: I am not sure of the point you are trying to make.

Clerk of the Committee: What I am trying to say is that you have five weeks. If you are going to travel six days and, as Mr Kormos suggests, to six different towns, physically you are not going to be able to do it. Let us be realistic about this, please.

Mr J. B. Nixon: I am used to leaving on a plane on a night, getting there, going to bed, waking up in the morning and starting the hearings. The hearings are finished at 5 o'clock and you get on a plane, train or whatever and go home. Why can we not do that?

Clerk of the Committee: We could do that if there are flights going to these towns, but there is no flight going into Kingston. We would have to take either the bus or the train.

Mr J. B. Nixon: I am suggesting Sudbury, Thunder Bay, Ottawa and Windsor.

Clerk of the Committee: There are no problems there at all.

Mr J. B. Nixon: There are no problems, so we can do six full days of hearings if we go to the four cities. That answers your major concern, I think, does it not, Peter?

Mr Kormos: How do we get six days from one day in each city of four cities?

Mr J. B. Nixon: If you have two days—

The Vice-Chair: You have a time period; not six days, six cities.

Clerk of the Committee: You have two Sundays' travel.

Mr J. B. Nixon: Multiply two times—

Mr Kormos: No, no. That is not kosher. That is really not what the intent of the agreement was.

Mr J. B. Nixon: Peter, I am agreeing with you; hear me out. What I am saying is that we go up on a Monday night, for instance, arrive, go to bed, have hearings in Sudbury for all day Tuesday and all day Wednesday—that is two days of hearings—and go home Wednesday night.

Mr Kormos: I can live with that, in the event that there are two days of hearings out of Sudbury.

Mr J. B. Nixon: Or one of the cities where the demand is, or two of the cities.

Mr Kormos: All right. If there is not, however—and I appreciate that Mr Nixon is prepared to give effect to the spirit of the agreement of the House leaders. He understands that perfectly well.

Mr J. B. Nixon: I do not try to divine what these guys do. I am just saying, let's have six full days of hearings in four cities.

Mr Kormos: Cool it, Brad, I am praising you.

Mr J. B. Nixon: You are on to it, right?

Mr Kormos: Let's operate from the understanding that we are talking about six days of hearings in non-Toronto locations. If there is a demand in any of those four named cities for doubling up, then I think we still have to be somewhat flexible in the next couple of weeks in assessing the demand.

The Vice-Chair: Could you define "demand"?

Mr Runciman: Can I make an amendment here? It would simply add on to that "plus up to two additional communities, if necessary."

The Vice-Chair: Except that in number 7 there are already five cities named. I am sorry, there are just four.

Mr Runciman: There are four, and if we find there is no demand for two hearing days in Sudbury, Thunder Bay and Ottawa, the subcommittee can say, "Okay, let's go to London."

Mr Kormos: That is a fine amendment.

Clerk of the Committee: I have "up to two others."

The Vice-Chair: Okay. Do you want to read it out?

Clerk of the Committee: As I understand, it would be "up to two other cities, as required."

Mr Runciman: "Plus up to two additional communities, if necessary."

Mr J. B. Nixon: Two additional days, as long as that accommodates allowing two days of hearings in any city.

Mr Runciman: That is understood.

Mr J. B. Nixon: Okay, as long as it is understood. I would rather put it in the motion so we can go back to it.

Mr Kormos: So the real issue is, in which of those cities do people want to stay more than one day in in January or February? Wow, wonderful communities.

The Vice-Chair: Is everybody clear on the motion then? All in favour of number 7 as amended? Opposed? Carried.

Number 8. All in favour?

Mr Furlong: If we are going to go to any other communities, some of these communities do not have daily newspapers. I do not know what the policy is on that.

Mr J. B. Nixon: Kingston and Hamilton do, and they were the two suggested. Certainly the four cities of Sudbury, Thunder Bay, Ottawa and Windsor do.

Mr Furlong: They all have?

The Vice-Chair: Yes.

Mr Furlong: I appreciate that, but do they not also have—if you are advertising only in those papers, does that catch people who are coming from outside that area?

Mr J. B. Nixon: The advertisement is broader than that. It goes to 11 papers or something like that.

Clerk of the Committee: It goes much larger than that.

The Vice-Chair: Thank you. All in favour of the motion then? Carried.

Recommendation 9: I believe there is an amendment. Who had the amendment on that?

Mr J. B. Nixon: My amendment, which probably is not phrased correctly, is essentially that because we are meeting in Toronto for hearings commencing on 8 January, we do some selection now of some groups that we want to call before us, because we cannot depend on the advertising.

Mr Runciman: Why can we not do it on 3 or 4 January or something like that?

Mr J. B. Nixon: But we have to give them some lead time before inviting them. They will

not know who they are until we have met and agreed who they are, extended the invitation. That is all.

Mr Runciman: Can the subcommittee not get together for half an hour next week?

Mr J. B. Nixon: Okay, and we can agree that they will just receive a written invitation or phone call for that week or first few days; fill it up with those groups.

The Vice-Chair: Okay, number 9, as amended, then? All in favour? Opposed? Carried. Recommendation 10? All in favour? Opposed? Carried.

Mr J. B. Nixon: Could I just ask a question? I hate to be technical, but does this budget cover six days in cities, six nights of hotel rooms?

Clerk of the Committee: Sure.

The Vice-Chair: And food.

Clerk of the Committee: It covers everything.

Interjection.

Clerk of the Committee: No, I will have to change the top of the extra week, I am sorry. That was not covered. This was for the four weeks. Long-range for that, there is no problem.

The Vice-Chair: Could I have someone to move the adoption of the entire report, please? Mr Sola? All in favour? Carried.

Now I guess the next thing we have to do is select from the list of organizations.

Clerk of the Committee: The subcommittee is going to do that.

The Vice-Chair: Oh, the subcommittee is going to do that.

Clerk of the Committee: When are you free? Some time next week?

Mr Runciman: Tuesday and Wednesday.

Clerk of the Committee: On to scenarios, please. Give it some thought for the subcommittee meeting.

Mr J. B. Nixon: Before we adjourn, there was an understanding—and we were going to discuss it in committee of the whole but I do not see it in the report and I am sorry I missed it—that in terms of presentations to be made to the committee, we agreed on, I think, a half-hour or 40 minutes for groups, 15 minutes for individuals, and the chairman would exercise discretion where there was overlap.

The Vice-Chair: Is that acceptable to everyone concerned?

Mr Kormos: That was our understanding from the subcommittee meeting.

The Vice-Chair: So 30 minutes for groups, 15 for individuals.

Mr J. B. Nixon: I just think that should be included in the report.

Clerk of the Committee: Can I include that as number 11?

Mr J. B. Nixon: Number 11.

Mr Kormos: Once again, I am not sure that that is something that has to be etched in stone. I think at this point, once again, we should remain flexible on that point. It is premature, in my view, to—

The Vice-Chair: Mr Kormos, I agree there has to be some flexibility, but then again, if we do not have some parameters on that, we will really foul up the system by going on too long. Everybody has indicated willingness to allow a certain flexibility.

Clerk of the Committee: The reason for the time, as Mr Nixon has suggested, is that it permits people in groups to time their presenta-

tion. They can have it for 10 minutes, make their presentation, then retain the other time to answer questions from the members. That is the only reason there is a time limit. For instance, if there is an umbrella group representing, let's say, the Insurance Brokers Association of Ontario, then the subcommittee could suggest that perhaps we should consider just inviting the group, and if time permits, then the other member groups from the cities we are visiting.

Mr Sola: I would just like to make sure that the time limits are identical for Toronto and the outside areas, because the last committee I was on, there was some complaint that there was more time allocated for the groups making their presentations in Toronto than there was for those outside of the Toronto area.

The Vice-Chair: We will ensure they are all given equal time. Any further business? This meeting is adjourned.

The committee adjourned at 1745.

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STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair: Pelissero, Harry E. (Lincoln L)

Vice-Chair: LeBourdais, Linda (Etobicoke West L)

Bryden, Marion (Beaches-Woodbine NDP)

Carrothers, Douglas A. (Oakville South L)

Charlton, Brian A. (Hamilton Mountain NDP)

Cureatz, Sam L. (Durham East PC)

Furlong, Allan W. (Durham Centre L)

McLean, Allan K. (Simcoe East PC)

Nixon, J. Bradford (York Mills L)

Sola, John (Mississauga East L)

Velshi, Murad (Don Mills L)

Substitutions:

Kormos, Peter (Welland-Thorold NDP) for Ms Bryden

Oddie Munro, Lily (Hamilton Centre L) for Mr Carrothers

Runciman, Robert W. (Leeds-Grenville PC) for Mr Cureatz

Also taking part:

Oddie Munro, Lily (Hamilton Centre L)

Clerk: Carrozza, Franco

Staff:

McNaught, Andrew, Research Officer, Legislative Research Service

Yeager, Lewis, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Financial Institutions:

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)

Simpson, Robert, Deputy Minister

Abols, Imants, Solicitor, Legal Services Branch

Wilbee, J. J., Assistant Deputy Minister and Superintendent of Insurance

Graham, Gordon, Manager, Policy Co-ordination, Service Development Branch

Burton, Gillian, Co-ordinator, Insurance Review Project

Wells, E. J., Deputy Superintendent of Insurance

Parrish, Colleen, Director, Policy and Planning Branch

From the Ontario Automobile Insurance Board:

Cottle, Cheryl, Senior Legal Counsel



No. G-1

Hansard

Official Report of Debates

Legislative Assembly of Ontario

Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989



Second Session, 34th Parliament

Monday 8 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 8 January 1990

The committee met at 1338 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I call the standing committee on general government to order. As a committee, we will be examining Bill 68, An Act to amend certain Acts respecting Insurance. All this week, we are going to be in this committee room, 151.

I think it is important just to read the resolution that came from the House directing us with respect to Bill 68, "Standing committee on general government to conduct public hearings on and clause-by-clause consideration of Bill 68, An Act to amend certain Acts respecting Insurance, for a maximum of five weeks; that the committee be authorized to adjourn to places in Ontario for not more than six days; that the bill be reported to the House on 19 March 1990."

Before the Legislature adjourned, we had a technical presentation from officials from the Ministry of Financial Institutions. Today we have the Minister of Financial Institutions, who will be making a statement to the committee.

MINISTRY OF FINANCIAL INSTITUTIONS

Hon Mr Elston: Good day to everyone here and the best of the new year to each and every one of you. It is a pleasure to be here to start this portion of the hearings in the review of Bill 68.

I know that you have already, as the chairman has mentioned, received a detailed briefing on the technical material in the bill and that you have spent a considerable amount of time talking with the deputy and his capable staff. Automobile insurance, as you know, is a complex subject, as evidenced by the more than 40 pages of Hansard that resulted from your technical discussions on the bill.

What I would like to do today is review the history and background that led to this important initiative, identify the principles that guided us in the development of the Ontario motorist protection plan and examine some of the claims of those opposed to Bill 68, the bill we are studying.

Like many other North American jurisdictions, Ontario began to experience an automobile

insurance crisis in the mid-1980s. Premiums increased dramatically for many motorists and some high-risk drivers became uninsurable in the private marketplace. The average premium in this province rose from about \$513 in 1985, for example, to \$636 in 1986. That is a huge year-over-year increase of some 24 per cent.

As the crisis worsened in 1987, our government was forced to intervene by capping premium increases and moving to regulate rates. The Ontario Automobile Insurance Board was given the responsibility of holding industry-wide hearings and establishing rates within a mandated classification system. By early 1989 it had become clear that the cost pressures could not be contained without fundamental changes to the insurance product itself.

We established four objectives that had to be met if the new insurance plan was to succeed, four fundamental principles that guided all our efforts in the development of the new system:

First, affordability: Insurance rates had to be kept as low as possible, not just in 1990 but for years to come.

Second, availability: We had to have a highly accessible marketplace.

Third, timely delivery: Benefits had to be paid promptly to accident victims.

Finally, comprehensive protection: People injured in accidents had to be properly compensated.

When we began to examine our options within the context of these four principles it became apparent that we could not respond by simply holding rates to their artificially low levels. While this would have resulted in a short-term gain for consumers, ultimately there would have been a mass withdrawal of companies from the market and a widespread lack of insurance availability.

We have already suffered some fallout as a result of this unstable situation with several companies no longer writing new automobile insurance policies in Ontario. Had we failed to address this issue, we would have found ourselves in the absurd predicament of having government-mandated limits on premium increases and fewer and fewer companies offering insurance coverage.

Nor could we have responded by simply allowing rates to rise to a level that would have ensured product availability. It would have meant moving some 30 per cent to 35 per cent beyond where we are now. That insurance would have become unaffordable for many motorists in the province of Ontario.

The rate hikes would have put auto insurance beyond the reach of many seniors, people on fixed incomes and low-wage earners. Those who drive for a living could have been forced off the roads and out of their jobs. Young people certainly would have had great difficulty paying the premiums.

Faced with this prospect, the only reasonable choice was product reform.

There was another option which we rejected, one which the New Democratic Party has advocated, and that is the establishment of a public insurance system. Some argue that a government-run auto insurance monopoly would solve all our problems. But in fact its creation would cause massive disruption and dislocation in an industry which currently employs some 40,000 people in Ontario.

We have a long history of privately delivered auto insurance in this province. Our market is extremely fragmented with more than 100 companies generating in excess of \$3 billion a year in direct premium income.

A public plan would remove competition and product choice from the marketplace and it would result in massive startup costs and the establishment of a large bureaucracy.

Public delivery would do very little to ensure rate stability over time because it does not address the underlying causes, as demonstrated by recent sharp premium increases in those provinces with public auto insurance plans.

Think about the loss of employment and financial hardship that some of the 40,000 people in the industry would have had to endure. These are not mere statistics. These are real people earning their livelihood in the insurance business.

No insurance system can satisfy the demands of everyone in society, but I believe that the OMPP is the best plan for the majority of Ontarians, given the varied incomes and the needs of the more than six million drivers in the province.

Why? Because it finds a balance between costs and benefits. Injured victims will be fairly and quickly compensated and rates will remain affordable because we have designed a sensible

plan, not a luxury product that only the affluent can afford.

Consumers are not fooled by the rhetoric of those claiming that the sky is the limit on benefits while ignoring the costs. The OMPP looks after the interests of the many, not the special interests of the few.

Throughout these hearings, committee members should be asking witnesses what every new proposal would cost in additional premiums. We know that the OMPP, as it is now presented in Bill 68, will hold down insurance rates this year to very reasonable levels. I said it in September and I will say it again now. Under our reforms, there will be a rate increase, on average, of only eight per cent in urban areas, and average rates in rural areas will not increase at all in 1990.

The critics of Bill 68, on the other hand, do not talk about costs. They like to pretend that the growing volume of litigation somehow has no effect on insurance premiums. A group calling itself Fair Action in Insurance Reform, for example, has advocated retention of the tort-based system as well as enhanced no-fault benefits, but this loose coalition of special interests, directed by a group of personal injury lawyers, has studiously avoided any mention of what its proposals would cost the average motorist. We estimate that maintaining the status quo would result in an average premium increase of 30 per cent to 35 per cent. Improvements to the no-fault benefits, which we all agree are desirable, will boost rates a further five per cent to 10 per cent.

In total, then, the insurance system favoured by the personal injury lawyers is one in which the average driver of this province will be paying well over \$1,000 a year in premiums. The average industrial wage in Ontario was about \$25,000 annually in 1988. The lawyers' solution, forcing many people to pay more than \$1,000 a year in auto insurance premiums, is unrealistic and unfair.

During your deliberations you must pay careful attention to both the demands for change in the product and the cost of incorporating those changes into the Ontario motorist protection plan. The motorists of this province must have an insurance system that provides good protection and affordable rates. We all know that an insurance product which comes fully loaded with benefits cannot be purchased at standard rates. In the real world, consumers know that they ultimately get what they pay for.

This government will be vigilant in ensuring that the basic plan does not become so prohibi-

tively expensive as a result of the many extras demanded by special interests that the average motorist cannot afford to drive. We have to ask ourselves what is reasonable. How much are people willing to pay into the insurance pool? The answer to that question will define the coverage that is available.

There is no magic in this, just some difficult choices and tough decisions. We cannot wish a perfect insurance system into being. An insurance plan has to be funded by the hard-earned dollars of every policyholder in the province. Whether the critics like it or not, there is a limit to how much insurance the motorists of this province can afford.

As Minister of Financial Institutions, it is my job to develop a new insurance system that would operate on a sound financial basis, one that would neither undercompensate nor overcompensate victims of automobile accidents and therefore as a result would be realistic in terms of its costs. That is what the Ontario motorist protection plan achieves.

What we have designed is a made-in-Ontario plan. Private insurance companies will continue to operate in the market, but they will be tightly regulated by a new watchdog agency of the government. This made-in-Ontario plan will provide enhanced no-fault benefits to all injured victims and it will permit litigation only in cases of death, permanent serious disfigurement or permanent serious impairment of important bodily functions caused by continuing injury that is physical in nature.

Access to the courts will be retained in serious cases because additional compensation may be required, and unnecessary litigation, as a result, will be eliminated so that premiums remain affordable. The threshold recognizes that most injured victims will be well protected by the enriched no-fault benefits and will therefore have no need to sue. Furthermore, a clear definition of the threshold was required in order to eliminate confusion and thereby minimize the amount of litigation.

Critics have misled the public into believing that psychological injury is not covered by the plan. The truth is such victims stand to gain significantly over the past system. Indeed, the plan has been drafted to ensure that psychiatric rehabilitation is included as part of the no-fault benefits. As well, these victims will be able to sue if there is a physical manifestation or physiological explanation of the trauma. If the individual has a permanent physical impairment

that results in psychological disability, he or she will also be able to sue in court.

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The Ontario motorist protection plan will financially protect all injured victims, whether they are the cause of an accident or not, but "no fault" does not mean that bad drivers will go unpunished. In fact, they will be penalized more than ever under our plan. Some critics suggest that by restricting litigation under the new plan, we will be removing deterrents from the system. That is patently untrue. In fact, it is questionable whether the tort-based system itself really acts as a deterrent to bad driving. The number of accidents and injuries continues to rise in spite of the threats of lawsuits.

We believe that the best deterrence comes from criminal sanctions, higher insurance premiums, vigilant enforcement and better education. That is why fault will continue to be used for rating purposes under the new plan. Bad driving will result in higher insurance premiums and good driving records will be reflected in preferred rates. That is why we are initiating a series of measures to improve highway safety, reduce accidents and injuries and lower the risk of driving in Ontario.

I will deal with the comprehensive nature of our proposal a little later, but right now I would like to set the record straight regarding some of the false and misleading statements that have been made in recent weeks.

The first misconception, perpetuated by disgruntled personal injury lawyers, is that the government acted unilaterally in introducing the OMPP. This claim could not be further from the truth. The Ontario motorist protection plan was developed after a great amount of consultation and study. We listened to the views of all parties—consumers, seniors, insurers, accident victims, litigation lawyers, anti-drunk-driving groups and many, many others. Two major reports, by Dr David Slater and Mr Justice Coulter Osborne, were commissioned and extensive hearings were conducted by the Ontario Automobile Insurance Board. We followed much of this advice.

The Slater report, for instance, recommended the government consider a privately delivered pure or partial no-fault system. Many of the Osborne report's recommendations were also incorporated into the new plan, including the retention of a private delivery system, a substantial increase in accident benefits, timely payment, broker disclosure and enhanced consumer protection measures.

It is true that Mr Justice Osborne recommended that the tort-based system be retained, but when he wrote his report he believed that claim costs were moderating. Regrettably, that did not happen.

With bodily injury claims soaring to \$1.8 billion in 1988 and total claims rising at close to twice the rate of inflation, it became clear that the existing system had to be reformed or rates would spiral beyond the reach of the average motorist.

Next there is Ralph Nader. He comes to Canada to tell us that we do not know how to direct our own affairs, that our policy is somehow un-Canadian. Then he admits he does not understand our system of universal health care, nor does he understand our commitment to providing a social safety net for our citizens.

Finally, I have to take issue with the misleading advertising that the Committee for Fair Action in Insurance Reform has produced. Copies of this ad have been distributed and I want to look at it in some detail.

It cites a hypothetical example in which a mother witnesses her child being struck by a car. The driver of the automobile is said to be negligent. The advertisement then makes several statements that are factually incorrect.

"Under the proposed no-fault insurance plan these innocent victims will probably get nothing." The insured daughter will be eligible for up to \$500,000 of supplementary medical and rehabilitation benefits under the new plan.

"Laura cannot recover for lost wages, nor for the trauma of seeing her little girl run over." The mother can recover medical expenses for any psychological or psychiatric treatment not covered by OHIP up to \$500,000. If the mother suffers a psychological impairment and is unable to work as a result of witnessing the accident, she will receive income replacement benefits of up to \$450 a week.

If the mother remains at home to look after her injured child, she will recover the amount of income lost in caring for her daughter up to a maximum of \$1,500 a month and all reasonable expenses incurred, such as transportation and special equipment costs. Total payments with respect to this long-term care could amount to \$500,000.

"With no-fault insurance the innocent victim will be treated no better than the negligent driver. And, in some cases, they may be treated worse." If the daughter's injury meets the threshold, a negligent driver can still be sued under the new plan.

It is difficult to imagine how negligent drivers will be treated better than innocent victims. True, victims under the age of 16 will not be entitled to weekly income benefits, but that is no different from the current system in which infant plaintiffs have no pecuniary claim for lost wages.

If the driver was impaired or committed a Criminal Code driving offence, he or she will be denied income replacement benefits as well.

"We feel that Ontario's proposed no-fault insurance plan does nothing to keep dangerous drivers off the road. We want to see crash rates lowered, not insurance benefits." That is by John Bates, president of People to Reduce Impaired Driving Everywhere. This statement conveniently ignores the many comprehensive initiatives of the Ontario motorist protection plan aimed at reducing accidents and deterring bad drivers. I will have more to say about these measures later in my comments.

The sentence "We want to see crash rates lowered, not insurance benefits" is a rhetorical flourish founded on a patently false premise. The guaranteed accident benefits will be broadened and significantly enhanced under the new plan. Again, I will provide details a little bit later.

What if we alter this example slightly so that it typifies the sort of accident most common to this age group? Let's say the child darted out in front of a car from between two parked cars and the driver of the automobile had no chance to stop. What then? Under the current system, the daughter would receive a maximum of only \$25,000 in supplementary medical and rehabilitation benefits. The mother would get nothing. Since the driver of the car was not at fault, there would be no compensation available through the courts.

In contrast, the Ontario motorist protection plan would provide all the benefits previously mentioned: that is, up to \$500,000 in supplementary medical and rehabilitation benefits for the child; the same level of benefits for the mother as a result of any psychological injury; income replacement benefits for the mother if she suffers a psychological impairment and cannot work; all reasonable expenses incurred and up to \$1,500 a month in lost wages if the mother remains at home to care for her injured daughter. So much for honesty in advertising.

The critics have proposed a wide spectrum of costly solutions, from government-operated pure no-fault schemes to retention of an existing system that clearly does not work. Ralph Nader, the American consumer advocate, disagrees with the Consumers' Association of Canada. He

would retain the tort system and increase benefit levels, at great cost to every driver. The association, meanwhile, wants a pure no-fault plan similar to the system in Quebec.

The Ontario motorist protection plan meets the needs of all motorists in the fairest and most socially responsible manner possible. The plan will ensure that rates remain affordable and it will return people hurt in auto accidents to as normal a life as quickly as possible. Is that not what insurance is really all about?

By reserving the courts for only the most serious cases, substantial savings can be achieved, savings that can be passed on to the consumers of this province in the form of higher benefits and more affordable rates.

Thanks to the inefficiencies of the tort liability system, only an estimated 60 to 70 cents of every dollar awarded by the courts finds its way into the pockets of accident victims. The rest, estimated at more than \$500 million a year, goes to pay lawyers in settlement costs. Of course, these legal and administrative expenses have to be paid by someone, and that someone is every driver, in the form of higher insurance premiums.

Moreover, I think there is a growing recognition that the sheer volume of litigation has got out of hand. Only by reducing the amount of litigation will we ensure that more of the premium dollar goes to those who need it—the injured victims.

There are many other measures in the comprehensive plan that will help keep insurance rates down. The OMPP is a bold approach that recognizes that we must address the underlying causes, not merely the symptoms, of rising insurance costs. These underlying causes are not unique to Ontario. Many other jurisdictions, particularly in the United States, have experienced similar problems: growing traffic volumes, rising accident rates, more costly car repairs, increased injuries and higher claims costs.

There were 203,000 automobile accidents and 121,000 injuries reported in Ontario in 1987, the most recent year for which statistics are available. Population growth and economic prosperity have put hundreds of thousands of new drivers on the roads. The number of licensed drivers in this province, for example, has risen sharply from 4.7 million in 1978 to more than six million today.

What does all this mean? Simply that product reform will help moderate rates in the immediate future. But if we want long-term stability, we must act on a number of fronts so that consumers

are protected, our roads are made safer, and the costs and risks of driving can be reduced as much as possible.

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This is exactly what we intend to do through a series of initiatives involving several ministries. Actions to deter bad driving and promote highway safety under the new plan will include the following: increased police enforcement on our major highways; substantially higher fines for speeding and other traffic offences; new traffic management systems and equipment; public education campaigns to promote seatbelts and the daytime use of headlights for all automobiles; driver safety promotion in the workplace, and a new program requiring drunk driver repeat offenders to seek treatment for their problem before their licences can be reinstated.

Other measures designed to protect consumers will assist in keeping insurance costs down. These will include an expansion of the ghost car program to deter fraud by repair shops; a requirement that all insurance companies offer policyholders the option of monthly billing; minimum 30 days' notice prior to the nonrenewal or cancellation of a policy; a provision allowing certain drivers to be excluded from a household policy so that good drivers are not penalized by the bad drivers in a family; a prohibition against tied selling, which is making the sale of one insurance product conditional on the purchase of another product; a requirement that insurance policy documents provide full disclosure of the separate components of the coverage and how the components were rated and the cost of each is determined; a requirement that brokers must disclose on request the number and identity of insurance companies with whom they have contracts, and a requirement that insurance companies establish programs to deter fraudulent claims so that the majority of honest policyholders do not have to pay higher premiums as a result of a few dishonest people.

Insurance companies will be subject to a tough new regulatory regime under the Ontario motorist protection plan. A new Ontario insurance commission will have broad powers of intervention and enforcement. This watchdog agency will be created through a merger of the Ontario Automobile Insurance Board and the office of the superintendent of insurance. It will be responsible for ensuring that accident victims receive adequate and prompt compensation and that disputes are quickly resolved through mediation and arbitration. The commission will also be

responsible for protecting the interests of consumers and regulating rates.

Quite frankly, the industry's record in the delivery of benefits has not been exemplary, and we are adopting stringent new measures to ensure that there will be no unreasonable delays in the future. Injured victims will receive income replacement benefits within 10 days of filing a claim and accident benefits within 30 days. Insurance companies will be charged interest penalties of two per cent a month for not paying on time. This is a dramatic improvement over the existing tort-based system.

In the past, victims have had to wait months and sometimes years for compensation. Victims will not have to pay for costly litigation or worry about the outcome of their claim, because the benefits are guaranteed. This is a major feature of our new plan. The timely delivery of benefits is especially important in cases of rehabilitation, because early treatment is often critical to recovery. The new plan will take the guesswork out of benefit recovery. It will replace the adversarial system with a quicker, more responsive and more humane approach.

The Ontario motorist protection plan will provide a social safety net that this province needs at a price that motorists can afford. It will compensate everyone injured in an auto accident, regardless of fault. We believe that all victims of motor vehicle accidents should be protected, and there are compelling reasons for this position.

First, most accidents are the result of a moment's inattention and not criminal negligence; the mother, for instance, who turns for an instant to check her baby in the back seat and drives into the car in front of her. Should she be denied benefits because of this moment of inattention? Second, should the innocent family of an at-fault driver be punished as well by withholding that person's accident benefits and consigning the entire household to a lifetime of debt as a result? Finally, does it not make a great deal more sense to provide proper and adequate care to all injured victims regardless of fault, so that they do not become long-term dependents on society?

I am sure that you are all well aware of the improved level of benefits that will be available under this new plan, but let me summarize. Some of the highlights are the following. Income replacement will rise from \$140 to \$450 a week, an increase of 221 per cent. That is equal to the take-home pay of someone earning approximately \$30,000 a year. As stated earlier, the average

industrial wage in Ontario was about \$25,000 in 1988.

For the first time, students, seniors and the unemployed will be entitled income replacement benefits of \$185 a week. Child care benefits will be provided for the first time, \$50 per child to a maximum of \$200 a week. Income replacement benefits for unpaid homemakers will rise from \$70 to \$185 a week, an increase of 164 per cent. The entitlement period in cases of total disability will be increased from 12 weeks to life. Supplementary medical care and rehabilitation benefits will rise from \$25,000 to \$500,000. Long-term care benefits will be added to the level of \$500,000. Death benefits will be expanded from \$10,000 to \$25,000, an increase of some 150 per cent.

Beyond these minimum benefits provided under the basic coverage of the plan, consumers will be able to purchase optional insurance for even greater protection. They will be able to tailor their insurance to their individual needs.

To conclude then, this plan offers the best solution to the many difficult problems associated with automobile insurance. As legislators, we all have a duty to uphold the public trust. The bill that you have before you is the product of diligent effort and firm result to fulfil that obligation. If you ask what the alternative to the OMPP is, let me show you.

Here we have a graph, and it has been distributed, I believe, to people here at the table as well. The alternative is a runaway increase in premiums this year that will put insurance beyond the reach of many motorists. Without these reforms, the average driver will be paying 30 per cent to 35 per cent more. Under the Ontario motorist protection plan, however, premium increases will be held to very moderate levels.

The difference between what we estimate in 1989 and what would happen in 1990 is demonstrated by the dark green and then going to the hatched marks on top of the year 1990. Those are the differences in the level that would be required without reform.

Let me repeat, there will be an average premium increase of only eight per cent in urban areas and no increase at all, on average, in rural areas. As well, the many initiatives designed to reduce accidents and make our roads safer will help stabilize rates for years to come.

The Ontario motorist protection plan is a unique approach, a made-in-Ontario plan that balances the need for affordable automobile insurance with the requirement for protection in

the event of injury. This plan will ensure that injured victims receive the immediate care they need, without having to spend their family savings or go into debt while waiting for a possible court award or settlement.

The Ontario motorist protection plan is a comprehensive reform package which addresses the underlying causes, not merely the symptoms, of rising insurance rates.

The Chair: Thank you. Mr Kormos, any questions or comments?

Mr Kormos: None. I have some comments of my own, but I will reserve those for when I am entitled to make them.

The Chair: Mr Runciman.

Mr Runciman: I think I will do the same.

The Chair: Mr Kormos, are you prepared to make the comments then?

Mr Kormos: You know, you have a lot of nerve to come here and talk about truth or honesty. Ever since you have been confronted—and you know, you come here today somehow trying to give the impression that you were in touch with these problems all along. Well, the hell you were. You were confronted with them on a daily basis by people like Mel Swart and other members of the opposition, and for the longest of times, you denied that any problems even existed. It was only after being confronted with it in the most realistic and vociferous and articulate ways by the opposition that you finally acquiesced and recognized that indeed there was a problem.

This goes back to the early part of 1987. The problem was dealt with with more than a little bit of the usual rhetoric, and there were comments made about the freezing and the capping of rates. That commitment ranks along with the cheque being in the mail because the freezing and capping of rates resulted in, first, a 4.5 per cent increase, a subsequent 4.5 per cent increase and now a 7.6 per cent increase, the most recent of them.

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I have been able to watch the history of this. The most recent announcement—and the one you are acting on now is, of course, the September announcement of last year, when you and your colleagues, four other cabinet ministers, did your little chorus line up in North York. You touted the Ontario motorist protection plan. You made all sorts of promises once again, and quite frankly, I have to tell you, the credibility of this government with respect to a whole pile of

things, but auto insurance first and foremost, is virtually nil. And well it should be.

Let's not forget who we are talking about when we talk about this government. We are talking about the government of Patti Starr. We are talking about the party of fridges and paint jobs. We are talking about a government whose leader made the boldest and most deceitful of commitments in September 1987 when he told all of Ontario that he had a very specific plan to reduce auto insurance premiums here in the province.

You were questioned on almost a daily basis subsequent to that election in 1987 as to exactly what this plan was. You touted your multimillion-dollar Kruger inquiry, the Ontario Automobile Insurance Board and its hearings up in North York. Estimates were anywhere from \$7 million to \$8 million or more in terms of the cost to the taxpayer of that inquiry.

It did some remarkable things. It determined that profitability was a significant factor and that if the government was going to start addressing the problem that auto insurers were facing in this province, it had to set a standard of profitability that was perhaps four times what profitability had been in the year 1987. This bout of mythomania that you and your colleagues in the government have been suffering from appears to have infected those people in whose back pockets you have been for a long, long time.

I was surprised—not real surprised, just modestly surprised—to see a newspaper article in the *Toronto Star* on 23 December 1989. I come from a small town and I read it there first, in the small-town paper run by the Canadian Press. It looked like it originated as a press release from the Insurance Bureau of Canada because it quoted Jack Lyndon. It talked about how the province plans to force a modified no-fault insurance program on the industry early in 1990.

My goodness, this seduction of the government by the auto insurance industry is being translated into a rape of the industry by the Liberals. I tell you—a modified no-fault threshold system forced on the auto insurance industry? Quite the contrary; the auto insurance industry has been crying and begging for a threshold system for a long time. Indeed, its submissions to the Osborne Inquiry into Motor Vehicle Accident Compensation in Ontario was one where it remarkably sought a threshold which was not even as onerous as the one that is contained in your Bill 68, which I will talk about later because you have mentioned that more than a few times. I will talk about that in the part of my comments

that should be subtitled, "Liberals are Tories too."

But it remains that it was remarkable to read what was obviously a press release from the Insurance Bureau of Canada that somehow this threshold system was being forced on it. That is not just deceitful, it is outright dishonest, because it simply is not the truth and it is the farthest thing from the truth.

What is more remarkable is the maintenance and the perpetuation of the unprofitability myth. You people have been jumping on that bandwagon as well. The closing paragraph in this little press report was that—and they have to be talking about the auto insurers, because that is what the article is all about—the insurers lost \$408 million in 1988.

I cannot really speak to that, because nobody has made those facts and figures available to the public. But it goes on to say that the industry lost \$142 million in 1987. That is remarkable because it remains that the government's multimillion-dollar auto insurance board indeed examined the profitability of the auto insurance industry for 1987.

In its report, Industry-wide Hearing: Part 3, it commented on the profitability, and indeed it found that the auto insurance industry in 1987, far from operating at a loss, operated at a profit—nowhere near the profits that it wanted. I mean, quite frankly, it was a return on equity of 3.25 per cent as compared to the return on equity of 26.89 per cent in all other business not being auto insurance business.

But it remains that the dishonesty and the deceit with which the government has approached this problem is not unique to the government, that it is shared by the auto insurance industry as well. If that was not apparent before, it is apparent when they start releasing comments decrying their loss position, which are directly contradicted by their very own facts and figures. One of the criticisms we had, and it is still a legitimate one, of the OAIB hearings, was that the auto insurance industry controlled the presentation of not only the source of the data but the presentation of them.

The dishonesty aside, then we are left with the not-so-subtle, quite frankly crude, pettifoggery with which the government tries to present this legislation. We are talking here not about a no-fault system, because it is the farthest thing in the world from a no-fault system; what we are talking about here—there is nothing new about the no-fault component. There have been no-fault benefits available in this province for over a

decade now. The government of the day neglected at the time those were initiated to index them, so that the \$140 figure, which is now over a decade old, is extremely obsolete.

But that failure to index them is echoed in your own legislation, wherein your much-touted ceiling—mind you, a maximum; nobody will ever be entitled to receive more, notwithstanding that he is an innocent injured accident victim, than \$450 in lost wages. Under the existing system, however inadequate by virtue of not being indexed, a person who received the no-fault of \$140 could then look to the negligent party for the balance of lost income and make up the difference. You are denying him even that right.

Made in Ontario: I have to concede that, Minister. This plan, this bill, was undoubtedly made in Ontario. Not in the cabinet office; it was written in the boardrooms of the auto insurance industry. What it is going to do for them is generate a windfall in 1990 alone—if this Legislature permits this bill to be passed, it is going to generate a windfall for the auto insurance industry of approximately \$630 million. Every penny of that \$630 million is going to come from the pockets of taxpayers and drivers right here in the province of Ontario. So made in the province of Ontario it is, but not for the drivers of Ontario, because it is the most significant assault that has ever been launched against drivers and taxpayers in Ontario.

Alone, the \$95 million in lost revenue resulting from the government's cancellation of the three per cent tax on premiums—do not tell me that that \$95 million is not going to have to be made up by taxpayers in other ways, because the government surely has not cut its budget by that same \$95 million. The gift to the auto insurance industry, by virtue of the OHIP funding of what should be the auto insurance industry's obligation, is in the range of anywhere between \$40 million and \$45 million. So right off the bat, out of the pockets of taxpayers of Ontario, is some \$130 million. The elimination of benefits paid to innocent injured people will make up the difference, coming to a total of some \$630 million.

This is a system which is not a no-fault system but which is a threshold system. Albeit written in Ontario, it is something that the auto insurance industry has sought for a long time; albeit written in Ontario, it is not unprecedented in North America, because indeed states like Michigan, among others in the United States, have adopted these systems. In fact, that has reached something of a levelling out. Two of the jurisdictions

in the United States which adopted threshold systems have since abandoned them.

You have made repeated reference to public plans and you have made those references because, in the final analysis, there is no way that you can withstand questioning about the increased efficiency of those plans. The fact is that the problem in Ontario with respect to auto insurance was that it was becoming increasingly unaffordable, and too becoming increasingly unavailable.

Your bill, your legislation does not do anything to address either of those problems. It is not going to reduce premiums. Indeed, premiums, as you have indicated, are going to continue to rise beyond the levels that they have already reached. Nor does it do anything to address the matter of availability, because the fact is that more and more drivers in Ontario—not just bad drivers but good drivers too—are being denied insurance coverage, are being forced into the Facility Association, where they are paying premiums thousands and thousands of dollars more than what they would be paying on the regular market.

I want to talk to you a little bit about a driver-owned, public, nonprofit system. It is a truism and it is undeniable that in public systems drivers pay lower premiums. Quite frankly, it is also a truism that public plans return more of those premium dollars in claims. Indeed, in the years 1981 to 1984, an average of less than 86 cents on the Ontario motorist's premium dollar was paid out in claims and spent on claims adjusting. For the three public plans, Manitoba, Saskatchewan and British Columbia, the average of premiums paid out in claims-adjusting costs during that same period of time was 96 cents on the dollar.

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Wood Gundy's report, and I have it here, filed in this library in 1982, indicates that those western plans are simply more efficient, that far fewer drivers' premium dollars are spent on overhead, that profit and adjusting costs and claims settlement costs and far more of those dollars are spent on paying compensation to drivers and injured persons in the province.

There is an alternative to the unwieldy and highly weighted system that we have in this province now. It is a system of public auto insurance, a driver-owned, nonprofit system which, quite frankly, will continue to provide more affordable rates more fairly, will ensure that every driver in the province is insured and will guarantee that the gouging that has been

engaged in by the auto insurance industry in the last number of years will end once and for all.

It is remarkable that the auto insurance industry would cry, "No profit" as strongly and loudly as it does and yet, at the same time, fight so hard to retain control of an industry that it says is not giving it any revenue and not giving it any profits. There is something inherently contradictory in that. It has been making profits, it has been gouging drivers and you just gave them a Christmas gift and a birthday gift; it has all been wrapped up with a bow and it has been paid for by the taxpayers and the drivers of Ontario.

You talk about the criminality of some driving but I tell you, your having picked the pockets of drivers and taxpayers of Ontario and handed that—you have not picked their pockets, you have grabbed them by the ankles and shaken every last nickel and dime out of the taxpayers and drivers of Ontario. You have made sure that you have cleaned them out well, once and for all, and you have paid that over to the auto insurance industry.

The best investment that the insurance industry in Ontario ever made was when it invested in the Liberals and their candidates in the election of 1987, when the auto insurance industry and the insurance industry spent at least \$100,000—that was what was recorded—over \$100,000 on Liberal candidates across Ontario. That is the best investment it ever made because that is being returned manifold and not just in kind.

The sad thing is that it is not being paid back by the persons who incurred the debt, but the money is being taken from innocent, hard-working good people in the province. It is being taken out of their pockets and taken out of their bank accounts in payment of a debt and an unholy alliance that was forged, obviously, back in 1987.

There is nothing about this legislation that can justify the incredible costs that it is going to generate for drivers and injured people in Ontario. There is nothing about this legislation and there is nothing in any of your pettifoggery that will justify the immorality of what you have done by presenting this bill.

We will talk a little bit about these hearings. This government had every intention—indeed, it has made it quite clear—that it wanted this legislation to be rammed through the Legislature by 21 December 1989. The opposition did not let that happen. The fact is that it was only after some negotiation that the government backed off and permitted a modest five- to six-week period of hearings, with only four days of hearings in communities outside the city of Toronto.

Those, as you know, are the cities of Sudbury, Thunder Bay, Windsor and Ottawa. You know full well that there are not just hundreds but thousands of people across Ontario who want to comment on this legislation; who want an opportunity to appear before this committee and express their views about the impact this legislation is going to have on them, their families, their children and their neighbours in the years to come. You have not got the slightest interest in listening to those people because you know what their comments are going to be. Their comments are going to expose this legislation for being the bit of fluff designed to pad the pockets of the insurance industry that it is.

Why are you and this government so fearful of the people of Ontario? Why do you persist in the big lie of saying that this is a government that consults, yet you persistently refuse to give people opportunities to be consulted? You have consistently refused to give opportunities for people to speak out and to address the issues that this government claims it is dealing with. This government is the most fearful—the trepidation that permeates this government is surely superlative. The example of that is its refusal to consult, its refusal to permit a democratic process to carry on.

There is no way that you can rationalize or justify the limited and constrained period of consultation with members of the public. That is a betrayal of the most fundamental principles of democracy, one which would let people not just from Toronto, not just from Niagara, but from across Ontario appear before this committee to express views. You have denied them that. I hope that they in turn remember and deny you the mandate that you do not deserve at the next general election.

Those are my comments. I should indicate that I am opposed to the legislation.

Mr Runciman: I want to take exception to only one thing that Mr Kormos said. That was when he was suggesting that the Liberals were just like Tories. In respect of this legislation, there are some significant differences, and certainly in terms of other actions of this government, there are some pretty significant differences.

I have a prepared statement that will take about 15 minutes. I regret we do not have any copies available. They are being run off, so we will have them for the committee members before we break for the day.

It is a pleasure to be involved in the hearings on this bill. That is because for a while, as Mr

Kormos mentioned, it seemed that the government would not agree to any public hearings at all on this legislation. This reluctance to hold open hearings has puzzled some of us simply because it will fundamentally alter the rights of some six million Ontario drivers who pay \$3 billion annually in auto insurance premiums.

This, I thought, was a rather strange attitude on the part of the “no walls or barriers” Peterson administration. Why the hurry to whisk this bill through the Legislature without the depth of analysis and discussion it deserved? The government told us that the need for speedy passage was to protect consumers from large premium increases in the spring. However, the government has frozen these same premiums in the past and there is nothing to prevent it from doing so in order to ensure that this legislation gets the public scrutiny it deserves.

Why then the rush? Could it be that even this government is ashamed of this piece of ill-advised, anticonsumer legislation? Could it be that they are afraid the electorate will wake up to the true implications of this bill before they can push it through? Let’s look briefly at what those implications are.

First of all, this bill will be one of the biggest giveaways to large corporations in Canadian history. It is an odious piece of legislation, a cynical, fraudulent exercise designed to line the pockets of large insurance companies, to mislead consumers and to scapegoat the legal profession for this government’s continuing mismanagement of the insurance industry.

Let’s have some facts. On 7 September 1987, Mr Peterson promised the Ontario electorate that he had a “very specific plan to lower insurance rates,” a very specific plan which he implied was not based on “wishes and theories” but on “accurate information.” This “very specific plan” was soon found to be nonexistent, just like his plan to block the free trade deal, his plan to “rationalize” Sunday shopping laws, his plan to put beer and wine in corner grocery stores and his plan to provide over 4,000 new hospital beds. In short, that “very specific plan” has fallen into that giant chasm that separates Liberal rhetoric from Liberal performance—the Peterson credibility gap.

What was then done to improve the management of auto insurance in the province? The government called for the Honourable Mr Justice Osborne to examine the industry and then make recommendations, which he did, over the period of a one-year inquiry. These recommendations were ignored for the most part.

Next, the government's Ontario Automobile Insurance Board held public hearings in the spring of last year, and again this government has chosen to ignore the advice it received from that board.

Both inquiries warned against the very type of threshold insurance system that we are asked to consider in this bill. The government had the benefit of the advice of two comprehensive, expert—not to mention costly—reports on the threshold no-fault option and it has chosen to ignore both of them. Why? Who benefits? Certainly not the hard-pressed taxpayer, who has had to foot the bill for both these expensive inquiries. Certainly not the consumer, who will wind up paying more for lower coverage, fewer benefits and fewer rights under this proposed legislation.

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I object to this bill for eight specific reasons. First, it is unfair. This bill sacrifices fairness in the name of expediency. It provides worse coverage for the consumer and it restricts the rights of victims to claim just compensation for their injuries. It puts short-term political interests ahead of the long-term interests of Ontario consumers. It revictimizes the victims. It picks on the injured and the helpless. It signals to the irresponsible that there will be no major financial sanctions for their negligence and disregard for others.

It has been said, and with just cause, that this threshold no-fault system "could be the world's toughest on innocent victims of motor vehicle accidents." Any objective reading of this bill would support that conclusion. The bill stacks the deck against the vast majority of victims and will, for many injured, result in an erosion of the quality of coverage they currently enjoy, without delivering even so much as a marginal reduction in premium costs.

From what I have read, I believe the Attorney General of Ontario would agree with that assessment of the plan. Published reports of a recent legal conference in Quebec indicate that the Attorney General "acknowledged that the new plan will provide 'worse' coverage than the standard auto policy under the present tort/no-fault system."

I would not dream of disagreeing with the conclusions of someone Mr Peterson has described as "the finest legal mind in the country." So, if Ontario's Attorney General says this plan will provide worse coverage, I must take him at his word. I tried to contact him to verify this with him on Sunday, but I understand he was out

shopping at the time, so I could not get a hold of him.

Much of the unfairness in this bill stems from its definition of the threshold. The threshold in this bill is generally recognized as extremely stringent—likely the most stringent in North America. This threshold will likely bar at least 90 per cent of accident victims from access to compensation in excess of the no-fault benefits.

Members have heard numerous examples of the type of cases which will not meet the test of the proposed threshold and of the hardships which will result. I will limit my comments on this to the general observation that the threshold is so stringent that one is almost forced to conclude that the government has decided as a matter of policy to stabilize premium rate increases by reducing the level of compensation to accident victims. In short, the needs, interests and rights of accident victims will from now on take a back seat to the government's political interest in maintaining rate stability and its cozy relationship with the insurance industry.

What the government is saying with this bill is that Ontario can no longer afford a fair system of auto insurance. They are telling the battered victims of traffic accidents that their needs and rights do not matter. Surely even the most blindly partisan of the government members must in his or her heart question the fairness of a policy which will move us from a system in which an innocent victim has the right to claim against a wrongdoer for full compensation for non-economic losses to a plan which will pay absolutely nothing for such losses.

In failing to compensate for non-economic loss, the government has totally ignored the findings of its own insurance board. That board stated in its report last year that it "accepts that nonpecuniary losses are real losses and the denial of recovery for such losses discriminates against one subset of injured victims." They went on to note that "no evidence was introduced indicating that such claims are unworthy of compensation."

Another element of discrimination in this bill and one which challenges the fairness and the adequacy of the threshold in a most direct way is the proposed treatment of nonphysical injury. Section 231a of the bill specifically states that impairment must be caused by an injury which is "physical in nature," suggesting that genuine emotional and psychiatric illnesses will not meet the threshold test.

If anyone here believes that emotional or psychiatric illnesses are not every bit as disabling as physical injuries, I suggest he pays a visit to

any of the numerous psychiatric institutions of this province and sees the terrible, devastating effects of such illnesses.

No wonder the government has been too ashamed to explain why the threshold has been designed to exclude such cases. This committee owes it to these innocent victims to examine this provision very carefully. It may well be open to challenges under the the Charter of Rights and Freedoms, as suggested by the Insurance Observer publication.

Further, we must question how this bill could be considered fair when it forces the victim to fully carry the cost of lost income during the first week of disability, a period during which the victim will receive no payment whatsoever under this plan. This bill also forces victims to exhaust benefits payable under other income protection, disability or sick pay plans before they receive one red cent from this no-fault plan—or should we call it a no-benefit plan?

If the victim should recover from his injuries before benefits from these other plans are exhausted, he will receive nothing at all from this no-fault plan and nothing from his insurance company except the bill for his next premium payment.

Can we honestly say this is a fair system when, in exchange for depriving 90 per cent to 95 per cent of accident victims of the right to pursue full recovery for economic and non-economic losses, the government offers them, if they are lucky, the princely sum of \$450 a week in maximum benefits. I am told this amount is below the official poverty line for a family living in the Metro Toronto area. I am sure the average member here would have trouble living on that amount, even with Patricia Starr's support.

The government tries to explain away this inadequate level of benefits by comparing it to the existing no-fault schedule. As this government has failed to increase that existing, unfair schedule since 1985, any increase over that old amount would seem large by comparison. However, the amount of \$450 in this economy is desperately unfair to most families.

Furthermore, this plan before us does not index the benefit, so inflation will quickly erode its real value and real purchasing power. As salaries and wages rise, the potential lost-income cost to the victim will increase also. If that is what this government calls fairness, if that is what this government calls protection, it is either seriously deluding itself or misleading the people of Ontario.

I would also ask you, Mr Chairman, if it is fair that under this plan an accident victim could face what amounts to double jeopardy with regard to the question of whether his case meets the threshold test. A gentleman by the name of Theodore Rachlin noted in his analysis of this plan that a victim who tries to seek compensation beyond no-fault is going to be in an extremely difficult position because "he may have to overcome the threshold not once but twice."

This comes about because the legislation will allow an insurance company contesting a claim to bring a motion at pre-trial for a judge's determination as to whether the threshold is met. If the decision is against the victim, then it is game over for the victim and that is the end of the claim. If, however, the decision supports the victim's claim, the insurance company will be allowed to raise the question of threshold again at trial.

I am not sure why the government has opted to give insurance companies two chances to prove that the claim does not meet the threshold and the victim only one chance to prove that it does. However, this is consistent with the general tenor of the plan. In designing this plan solely with regard to the interests of the insurance companies, this government has been as accommodating as Holiday Inn. There are no surprises in this motel, just the unseemly sight of the Peterson government in bed with the insurance industry.

The second reason I object to this bill is because it will cost the taxpayers of this province an enormous amount of money while providing a huge windfall to the large insurance conglomerates. This so-called motorist protection plan will result in annual tax break of \$143 million to the auto insurance companies. In addition, under the proposed threshold, these companies will save some \$480 million in compensation payouts for pain and suffering. They will save another \$150 million in compensation payments for economic loss. That is a total of \$773 million for an already very rich and powerful industry.

The tragedy is that the bulk of this money will come out of the pockets of those who can least afford it: the injured, the maimed, the blinded, quadriplegics. These people are entitled to live with dignity and without the extra burden of financial hardship.

There is another victim who will be present at every accident scene from now on in Ontario and that is the Ontario taxpayer. Tax breaks for large, wealthy corporations can only mean one thing for the already overburdened Ontario taxpayer: taxpayers will end up paying more for this

legislation through higher gasoline taxes or higher licence fees or the new payroll tax or through one of the myriad of new ways that the Peterson government has found to squeeze the middle class and the poor.

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Regardless of how this benefit to the auto insurance companies is offset, it is clear that the Liberal plan involves a direct taxpayer subsidy for the auto insurance industry. As a consequence, the taxpayer ends up with higher taxes but not the lower insurance rates the government promised more than two years ago.

The Peterson government is handing another plum to the wealthy auto insurance industry. Those people whose income is greater than the maximum weekly benefit under this plan will have to purchase, if they can afford it, additional insurance to reduce their potential salary loss resulting from an accident. What a great new source of profit for the industry. We have to begin to wonder whether this legislation was drafted in the cabinet room at Queen's Park or some other place; perhaps, as Mr Kormos suggested, the boardrooms of certain insurance firms. I suggest we call this bill by its real name, the insurance lobby benefit package. And they say that lobbying does not pay off.

Third, I object to this threshold no-fault scheme because it is entirely arbitrary. As Mr Justice Osborne put it in finding 120 of his report, "It is relatively inefficient and unnecessarily arbitrary."

Justice Osborne expanded on this in chapter 12 of his report when he noted: "However precise the threshold may be, there will inevitably be disputes about who is out and who is in.... To provide reasonable no-fault benefits and at the same time to be cost-effective, the threshold must deny nonpecuniary compensation to a substantial number of accident victims who would otherwise be entitled to such compensation. That is necessarily arbitrary and in many instances unfair."

I think it is the height of irresponsibility for the Peterson government to ignore the advice of this learned jurist. The report was produced at the request of this government for a cost of \$1.4 million and it has been described as "probably the most comprehensive analysis of automobile compensation plans ever done by anyone anywhere." I believe we ignore this advice at our peril.

Justice Osborne went on to warn that any potential cost or premium decreases would be modest and that "those modest savings would be imported on the backs of over 90 per cent of

injured Ontario motorists who now have the right to seek non-economic compensation."

Justice Osborne proposed a system of compensation which provided for enriched no-fault benefits, maintained the right of innocent victims to seek compensation through the courts and which would have reduced premiums. This was obviously not what the Premier wanted to hear, so the Peterson government next directed the auto insurance board to look into certain threshold systems and the system proposed in the Osborne report.

That board, as noted by Theodore Rachlin in his analysis of the Ontario motorist protection plan, "was critical of threshold systems and said that Justice Osborne's proposed no-fault benefits would be appropriate so long as there was no threshold system which would limit the right of innocent victims to claim any additional losses."

Despite those two expensive, expert opinions the government decided to proceed with "a threshold plan which goes much further in eliminating rights to compensation than any plan ever suggested to Justice Osborne or the board and is proposing no-fault benefits less generous than Osborne had recommended. To top things off, this plan contemplates no premium reduction and provides for a substantial taxpayers' subsidy" to the insurance industry.

The fourth reason I object to this bill is that it is based on the false assumption that no-fault will be more cost-effective than the current system. There are no believable figures at all to back up this assumption. Indeed, there is quite a body of evidence to the contrary.

Some of these misleading assumptions can be traced back to the Slater report. The Ontario Task Force on Insurance, under Slater, calculated that more than 50 cents of every premium dollar in the current system is absorbed in the administrative and legal costs of running the system and that "less than 50 cents on a premium dollar is actually paid out in compensation under tort, compared to 80 to 90 cents that are paid out under no-tort insurance plans." That was the basis for the assumption that, under the no-fault system, victims will end up receiving a greater share of premium dollars, which was in turn used to justify limiting access to the courts.

The minister himself has used this argument in his efforts to justify this bill. Last year, in response to a question I put to him in the House, he replied in part that one of the objectives of the new system was to "redistribute the premium dollars that come into the system so that they go

quicker and...in larger amounts to the injured drivers."

To the extent that the government is relying on the alleged cost-effectiveness of no-fault as a rationale for stripping accident victims of their rights, it may want to reconsider its policy in light of the findings of Osborne.

It was noted in a review of the Osborne report that the report refuted the cost-efficiency claims made on behalf of no-fault. Research conducted for Osborne determined that under Ontario's existing system almost 65 per cent of earned premiums went to pay claims while only 35 per cent went to pay expenses. By comparison, research has found that under the Michigan threshold no-fault, only 55 cents on the dollar is returned to claimants. A similar study of Quebec's pure no-fault scheme concluded that only 60 per cent of premium dollars was returned to claimants under that program.

Osborne also determined that the efficiency assumptions made by the Ontario Task Force on Insurance were in error and that a no-fault system in which policies are sold on an individual basis cannot return 80 to 90 cents on a premium dollar to claimants.

Therefore, I submit that this bill before us is based on flawed or questionable assumptions. In terms of the proportion of premium dollars that are paid out in compensation, the existing system in Ontario would appear to be superior to either the Michigan or Quebec no-fault models.

I would hope that in the course of these hearings proponents and supporters of the bill on the threshold no-fault option would be able to provide us with some proof that the government's claims about the positive effects of this proposed system on premium redistribution have some basis in fact and are not simply based on wishes and theories.

Further to that point, I would note that in its report last year the Ontario Automobile Insurance Board concluded that claims made about the superior efficiency of no-fault for compensating injured persons were inflated. That is a characteristic I suspect of most of the government's claims about this legislation.

The fifth reason I am objecting to this bill is the fact that no real effort has been made to quantify the cost to the public of administering this new system. We know all about the \$143 million in tax breaks for the insurance giants, but we have been provided with little information on what the cost will be to the taxpayers to administer the arbitration process to be established by this bill. You may recall that last month in committee I

attempted, without much success, to have those costs quantified.

My concern is that this bill and its arbitration process are going to saddle the public with an ongoing, annual administrative expense, which if the past record of this government is anything to go by will soon spiral out of control.

The Peterson government has launched a number of regulatory and administrative misadventures that have cost and continue to cost the taxpayers substantial sums every year. Aside from the insurance board disaster, we have watched the province's rent review system balloon by some 422 per cent since 1985, while the staffing level of the same program increased by about 139 per cent over the same period. What has the government bought with this mushrooming bureaucracy? Today, of course, the province's rent review system is in an administrative mess and has become a tenants' nightmare.

I fear that Ontario drivers will find, like tenants, that what sounds like a great idea in government press releases turns out to be something much more convoluted and expensive in practice. I believe the voter deserves some assurance that the process to be put in place by this bill will not evolve into the son of rent review in terms of either its costs or its inefficiency.

The sixth reason I am concerned about this scheme is that it has the potential to reduce access to insurance for the very people who need protection the most, the poor and the unemployed. It has that potential because the scheme will encourage the practice of what is referred to in the insurance business as "cherry picking." Under this practice, insurance companies seek to write policies only for those persons who present the lowest risk of outlay. This bill provides an additional incentive for companies to insure those individuals who have access to some other income maintenance program. This would then eliminate, or at least postpone payout by an insurance company in the event of a claim.

Mr Justice Osborne expressed this same concern about the impact of the bill on access to insurance in the standard insurance market. When he was asked about it he stated:

"I think you will find that the unemployed or the underemployed—those without collateral benefits—are going to have a very difficult time finding insurers who are willing to write the business. Insurers are going to attempt to write business where the insured has collateral benefits because then their exposure on the no-fault side is going to be limited...they will not want to write

the very people that this plan is designed to protect," or is supposedly designed to protect.

These are very damning words from a man who knows more about the insurance industry than most people in this country.

Mr Justice Osborne went on to state, "The incentives to writing business as a result of this, I think, will result in the population of the Facility Association expanding as it already has."

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No truer words have been spoken. Despite promises from the minister that the government's former policy on insurance would not result in more drivers being forced into the Facility Association, we saw an enormous increase in this phenomenon. The number of Ontario drivers insured by Facility increased by 103 per cent between November 1988 and July 1989. Therefore, we must take the minister's latest assurances on the issue of access to insurance with a very large grain of salt, if not an entire crate of Sifto.

My seventh objection to this bill is that this bill will do nothing to reduce premium costs or even provide a measure of price stability. The Attorney General himself has assured us that premium reductions simply will not happen. I must say that is one of the few truly credible statements I have heard from the government on this bill. The government, however, asserts that the bill will provide us instead with stable auto insurance rates, but where is the evidence to support that assertion?

Professor Jack Carr, who looked at the American studies of no-fault, found no evidence from the American experience that no-fault leads to stable rates. In fact, between 1975 and 1982 pure premiums for personal injury coverage increased 119 per cent in states with no-fault systems and only 54 per cent in states with traditional tort systems. So where is the alleged premium stability?

The citizens of this province deserve the facts, not a hodgepodge of wishes and theories. Far from creating premium stability or fulfilling the Premier Peterson's original promise of a very specific plan to lower insurance rates, this plan is likely to lead to an even greater increase in premiums than we might have expected under the existing system.

It is readily apparent that with this bill this government has divorced itself completely from its promise of lower insurance rates. Instead of talk of lower premiums we hear phrases such as "premium stability" and "lower rates of increase." These euphemisms for plundering the

pockets of consumers and taxpayers will fool no one. When the citizens of this province are promised by their Premier a specific plan to lower rates, they expect decent, honest legislation to do just that, not a tax break for insurance companies.

The final reason I object to this bill is the cost of eliminating the deterrent function of the tort system. I believe the extra deterrence of dragging an egregious offender in front of the courts, of making him look his victims and their next of kin in the eye and making him pay for both the economic and emotional and psychological damage he has done serves to help protect society from further damage by that individual.

I believe that the elimination of this extra deterrence and this old common-law right will cause the victims even more anguish and will result in more accidents caused by uncaring and negligent people. Nowhere do I see these extra costs figured into the lopsided equations that make up this bill. Nowhere do I see any real concern for the twisted and battered victims, only for the smooth bottom lines of large insurance corporations.

The bottom line on this bill is that the government wants the insurance consumer to pay more to get less, to give up long-cherished rights for lower benefits, and reduced access to provide increased profits for large corporations. No wonder the government was embarrassed at the thought of this open hearing. No wonder they wanted to rush this blighted legislation through the House.

The lack of a coherent and consistent policy over the past few years has wasted millions of taxpayers' dollars, has confused and alarmed consumers and has cost companies and individuals an enormous amount of time and effort to appear before inquiries whose reports are ignored by this government.

When they did get a chance to introduce proper legislation, what did they do? They gave us a bill that runs directly counter to the best advice they received, a bill that is seriously flawed in its assumptions and premises and a bill that will harm every consumer in this province. The Peterson government has bungled the auto insurance issue from day one.

It is, however, a sad irony that a government that took office promising to be both competent and compassionate has through its own incompetence and mismanagement created a piece of legislation which is desperately unfair to the poor, the injured, the maimed and the dying. If we are to be judged as a civilization by our

treatment of those who cannot help themselves, then this bill will be a black mark indeed on our society.

The thousand points of light we see out there today are probably flames from the Gucci lighters of insurance executives lighting up fat cigars in anticipation of this legislation going through. If this bill is to be proceeded with, I suggest that the government members had better look into taking out some election insurance, because the people of Ontario will not put up with a government that increases its stature with the insurance lobby by climbing on the backs of innocent accident victims.

This bill is seriously flawed and should be withdrawn.

The Chair: Does anyone else have any other comments? Before I adjourn for this afternoon—I recognize the reality that there may be some media people who would want to talk to the minister, Mr Kormos or Mr Runciman—could I get all-party agreement that we can proceed at 10 am, regardless of attendance, so that we do not hold up the deputants who come before us? Mr Kormos, is that no problem with you?

Mr Kormos: I am prepared to agree to that.

The Chair: Okay. Mr Runciman?

Mr Runciman: Fine.

The Chair: There being no other business, the meeting stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1456.

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From the Ministry of Financial Institutions:

Elston, Hon Murray J., Chairman of the Management Board of Cabinet and
Minister of Financial Institutions (Bruce L)



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Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 9 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 9 January 1990

The committee met at 0959 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: The standing committee on general government will come to order. We are proceeding with hearings on Bill 68, An Act to amend certain Acts respecting Insurance.

The first group to present is the Canadian Mental Health Association. Mr Richardson, if you would care to introduce your group, I inform you that you have half an hour. You can use all of it or any part of it for your presentation. If you want to, you can leave time for questions and answers from any of the three parties at the end. We are in your hands for the next half-hour.

Mr Richardson: Just one additional question: Will there be an opportunity for questions to come from us to the committee as well during that question period?

The Chair: I cannot see why not.

CANADIAN MENTAL HEALTH ASSOCIATION, ONTARIO DIVISION

Mr Richardson: Thank you very much, members of the standing committee on general government for inviting us, the Canadian Mental Health Association, Ontario Division, to be the first nongovernment group to make a presentation on Bill 68, the Ontario motorist protection plan.

My name is Howard Richardson. I am the executive director of the Canadian Mental Health Association. Along with me are my three colleagues: Adele Belanger to my right, a member of our policy advisory committee, Carol Roup to my left, our director of social policy and research, and to her left, Oscar Johvicas, our director of organizational development. We are here today to bring your attention to what we consider to be a serious omission in Bill 68.

First, let me give you a short introduction to our organization, the CMHA, Ontario Division. We are the Ontario arm of a nationwide association originally chartered in 1952. CMHA, Ontario Division is an incorporated nonprofit

charitable volunteer organization. We are dedicated to the promotion of mental health and the alleviation of the distress of the mentally ill. Indeed, our 35 branches throughout Ontario provide a wide array of direct-service programs for the psychiatrically disabled and their families, including things like supportive housing and social, recreational and vocational rehabilitation.

As well, our branches and our division office provide public information, education and referral services for the general public. Perhaps some of you have seen our television ads with the young boy talking about his father who got sick and the lady on the front porch talking about the presence of group homes in her neighbourhood and the benefits thereof.

Ontario Division has been a important partner, a significant partner, with the government of Ontario and the Legislature in attempting to develop an effective and efficient provincial mental health system, ever since the inception actually of the mental health program in the Ministry of Health in 1976.

Ontario Division provided leadership in the 1986 amendments to Ontario's Mental Health Act. We were especially active in consulting on and promoting Bill 190, wherein the Ontario Legislature voted to ensure that treatment will only be administered to competent psychiatric patients with their consent. One result of that legislation has been the appointment by the Minister of Health (Mrs Caplan) of the Weisstub inquiry on mental competency. The inquiry, to which our director of organizational development has been appointed, will be submitting a report to the Minister of Health in the very near future.

Ontario Division successfully promoted the basic human right of psychiatric patients to be able to vote in both municipal and provincial elections. Unlike the federal jurisdiction, where the government of Canada failed to act, and incidentally it was left to the courts to ensure the federal voting rights of the psychiatrically disabled, the Ontario Legislature amended Ontario's Election Act to give effect to the provincial and municipal voting rights of the psychiatrically disabled.

You may be interested to know that the patients in Ontario's 10 provincial psychiatric

hospitals in fact voted in the last two provincial elections, at almost the same participation rate and generally for the same successful candidate as the other voters in their local constituency. I would like to take this opportunity to thank those of you who have a provincial psychiatric hospital in your constituency and took the time and the opportunity of campaigning at those hospitals in the last provincial election. You are an important part of enfranchising the psychiatrically disabled. It is just that kind of normalization and socialization that our rehab programs are designed to achieve.

CMHA, Ontario Division was a significant part of the recent Provincial Community Mental Health Committee directly advising the Minister of Health. Ontario Division had members on the Graham committee, as it was called, as well as part of its research group and its administrative support, all of whom worked to produce the report Building Community Support for People: A Plan for Mental Health in Ontario.

The result of the report's publication has been its endorsement by the Minister of Health and her appointment of a steering committee to implement that report. Ontario Division's executive director has been appointed as a member of that steering committee, which is empowered to oversee the implementation of the mental health plan for Ontario, including the formulation of a Community Mental Health Act which, again, the Minister of Health has supported.

As you can see, we have been very active in working with the government and the Legislature of Ontario in making important advances in the mental health field. This is why we were particularly disappointed, when we reviewed the new Ontario motorist protection plan, to see that it had built within Bill 68 a clear and unequivocal case of discrimination.

I would like now to introduce Carol Roup who will continue with our presentation.

Ms Roup: As you know, the Ontario motorist protection plan is a modified no-fault automotive insurance plan with a very high verbal threshold. If you suffer injury, either directly or indirectly, from an automotive accident, you or your estate are prohibited under this legislation from suing for damages unless you have died or sustained (a) permanent serious disfigurement or (b) a permanent serious impairment of important bodily function caused by continuing injury which is physical in nature.

A vital question for us is, what about mental and psychological injuries? Ironically, the no-fault benefits regulations do recognize mental

and psychological injury. The 9 November 1989 Draft Regulation Made Under the Insurance Act: No-Fault Benefits Schedule lists, "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as the result of an accident" the supplementary medical, rehabilitation and long-term benefits.

When it comes to these draft regulations with regard to no-fault accident benefits, there is recognition that those suffering mental and psychological injuries require recognition and benefit. But when you examine the actual legislation, that is, Bill 68, wherein the verbal threshold is established, those who may suffer serious and permanent mental or psychological injury are excluded from the threshold. Only serious and permanent physical injuries are to be included.

When this discriminatory omission was brought to the attention of the Ministry of Financial Institutions, we were informed that the mental and psychological injuries would be considered in the threshold determination only if they were directly caused by a physical injury, but that in any event they would be covered under the accident benefits. Let me be absolutely clear here: Simply because the draft regulations on accident benefits do not discriminate against the mentally and psychologically injured does not mean that the piece of legislation, Bill 68, which initiates the drafting of regulations and which clearly discriminates should be allowed to pass.

It happens that there are cases from time to time wherein a clear and testable case of mental or psychological injury can occur resulting from a motor vehicle accident which has no direct provable physical antecedent.

Consider the following scenario: A father is driving with his daughter and is involved in an accident which is totally caused by the negligence of an impaired driver. The daughter suffers a severe head injury resulting in significant psychological impairment. She suffers from depression and a marked personality change. The father, although he sustains no direct physical injury, develops severe psychological impairment, having felt responsible for the accident. He suffers depression, his family relationships are strained and deteriorate. He develops an alcohol dependency and is unable to work.

Both individuals are experiencing real pain and suffering. However, our understanding of the proposed legislation would allow the daughter to challenge the threshold, as there is a physical component to the injury, whereas the

father could not. Surely one cannot view this as equitable.

The response of the Ministry of Financial Institutions would no doubt be to suggest that the father has access to the benefits under the no-fault schedule. That is true, but it is clearly insufficient and it is not just. Many individuals do walk away from vehicle accidents without any psychological impairment. However, there are those who are predisposed to psychiatric disorders, those who will not cope with trauma to the degree that their neighbours might.

Simply because some individuals may be more vulnerable than others to becoming seriously and permanently mentally and psychologically disabled does not mean that they should receive any less fair and equitable treatment under the law than someone who is seriously and permanently physically injured. To do otherwise is clearly to discriminate against the mentally and psychologically disabled.

The Canadian Charter of Rights and Freedoms under its equality rights, subsection 15(1), states, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." Clearly, the exclusion from the threshold discrimination of those suffering from a mental disability is not giving equality before and under the law, nor equal protection and benefit of the law.

Then there is also Ontario's Human Rights Code of 1981 which in part I, section 1 provides that every person has the right to freedom from discrimination, including on the ground of handicap which includes a condition of mental retardation or impairment, or a mental disorder.

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We wonder whether the drafters of this legislation asked for a legal opinion on whether this exclusion violated section 15 of the charter or section 1 of the Human Rights Code, and if they did receive legal opinions, what those opinions were. At this juncture I would like Oscar Johvicas to continue our presentation.

Mr Johvicas: Thank you, Carol, and thank you, Mr Chairman and committee members, for the opportunity to assist you in ensuring that a wrong is not enacted through this legislation.

The clear violation of the letter and spirit of the charter and the code broadcasts what I am sure is an unwanted and unintended message to the civil servants, the courts, you the legislators, the government, and most important, the public: that

to discriminate against the mentally disabled is not only acceptable, but actually is to be enshrined in a new law of Ontario. This bill, as it is currently written with the discriminatory threshold, reinforces the stigma against mental illness. All our actions and media campaigns to the public are severely diminished by the discriminatory threshold in this bill.

Ironically, the inclusion of permanent and serious disfigurement as meeting the threshold does include a physical injury which does not impair an important bodily function and which may or may not cause a serious and permanent psychological injury, depending on the individual case. Just because the injury can be seen, it appears to be included. Does that mean that mental and psychological injuries are excluded because they cannot be easily seen?

Let me assure you that they can be tested and clinically assessed. Indeed, the Workers' Compensation Board has included in its assessment of injuries compensation for pain and suffering as well as for post-traumatic stress. They are able to do so because they utilize the services of psychiatrists and psychologists to clinically assess how a worker has been mentally or psychologically injured on the job, including those kinds of injuries suffered by those workers involved in automobile accidents while on the job, ironically.

If the Workers' Compensation Board can take into consideration mental and psychological injuries independent of any physical injury, why cannot Bill 68 and the new Ontario motorist protection plan? Should not the Ontario motorist protection plan protect the full rights of the mentally disabled? Instead of passing a discriminatory piece of legislation which will require costly legal challenges all the way to the Supreme Court of Canada, let us remove the discrimination through amendments before the bill becomes law.

When CMHA, Ontario Division became aware of the discriminatory nature of Bill 68, we invited representatives from the Ontario Psychiatric Association, the Ontario Psychological Association, the Ontario Head Injury Association and the Advocacy Resource Centre for the Handicapped to meet together with us in our offices. We unanimously agreed that Bill 68 and its exclusion of the mentally and psychologically injured from this threshold was unacceptable discrimination against the mentally disabled.

As a mental health coalition we have written the Minister of Financial Institutions (Mr Elston) and presenter of this bill requesting that he amend

this bill to remove this discriminatory aspect. While we see the impact in the number of persons affected and amount of money involved as minimal, if not minuscule, we find that the symbolic damage is profound and continues and reinforces the stigma against the mentally disabled that we and you, our legislators, have worked so hard to reduce over the past five years.

We call upon you to unanimously amend the threshold portion of this bill and to add psychological and mental injuries to the threshold determination in section 231a of the act, section 57 of Bill 68. We ask that those who sustain psychological or mental injuries be given the opportunity to challenge the threshold test in the same capacity as the physically injured. Whether or not they meet the threshold is a matter that should be determined by the judiciary and the medical community and not by the insurance industry, nor by the Ministry of Financial Institutions, nor, I humbly submit, by the Legislature of Ontario.

To do otherwise is to return us to bedlam, to an archaic age of psychiatry, to a time when things physical and seen are considered real and things of the mind and unseen are considered unreal. Surely we have come too far to regress to such a view. As we enter the decade of the 1990s and we all stand at the threshold of the 21st century, let us not pass this law as it is currently written, a law that throws us back into the 19th century with regard to the mentally disabled.

We have all come too far and laboured too hard for that. It is not that we deserve better, but that you, our legislators, deserve to always be damning discrimination and enhancing equality. Today, here, now, the issue is equality for the mentally disabled. Tomorrow it may be an equality issue of race, ethnicity, colour, religion, sex, age or physical disability. To deny any of these the rightful legitimate equality within our laws is to deny them all. We will all be diminished if you fail to amend this discriminatory bill.

The Chair: I have 12 or 14 minutes. I have Mr Nixon, Mr Kormos and Mr Runciman.

Mr J. B. Nixon: I want to thank you for your well-considered brief. I appreciate your coming forward to make your comments known to us and I think they are thoughtful and well considered, but I do have some questions. You use as an example on page 3 a situation where a father is driving with his daughter and they are hit by a negligent car driver. The daughter suffers physical injury, the father suffers no physical injury but serious mental injury or damages.

Are you aware that if that fact situation is only slightly modified, for instance, let's say the father driving was following too closely or made an illegal left-hand turn or was exceeding the speed limit, and therefore was at fault and hit another car, under the tort system he certainly would not recover anything.

Interjection.

Mr J. B. Nixon: Mr Chairman, I would ask you to speak to Mr Kormos.

The Chair: If we could try to maintain some order during the presentation.

Mr Kormos: He almost screwed up and I wanted to caution him.

The Chair: Go ahead, Mr Nixon.

Ms Belanger: Perhaps I might speak to that. If we take aside the no-fault aspect that we are dealing with and for simplicity's sake simply remove the negligence aspect that was outlined in the scenario, if we take away that and now we put it in the present system proposed by Bill 68, we are still dealing with a disparity between the ways those two people would be dealt with.

Mr J. B. Nixon: But I am suggesting to you that there are real benefits under the proposed Ontario motorist protection plan in that whether or not the father is at fault, he has entitlement to benefits for his mental injuries, which he may or may not have under the tort system. At least the OMPP guarantees no-fault benefits of a substantial order, \$500,000 for long-term disability or care, for instance, whereas under the tort system he has got to go to court, wait two or three years, go through the lottery, hopefully have a good lawyer, hopefully have the trial work out, hopefully prove the other guy was at fault, and then recover something.

I suggest to you, in addition, there is lots of evidence that has been put forward and I am sure we will hear that suggests that the entire trial process causes serious psychological and mental trauma to many, many litigants, to the point where they suffer, if not permanent, long-term mental disabilities because of the agony and stress of a court process they do not control.

1020

Mr Johvicas: We are not challenging that there are not good benefits incorporated in this bill; what we are challenging is that those people who are mentally and psychologically injured are precluded from passing the threshold. Let them be the judges of whether they are going to be damaged or not by going to court, as the physically injured are. That should be their right

under the Charter of Rights and Freedoms of Canada.

So, no, we are not saying in a blanket way that this bill is a bad bill. We are just pointing out, I hope clearly and succinctly, that a provision of it, the limitation of the threshold to the physically injured, is not equitable, is not fair, and I would hope that you would not support that exclusion. We do not think that it will be a significant cost or increase in insurance fees, and I know the Minister of Financial Institutions (Mr Elston) is concerned how any changes will impact the insurance fees and the cost of the insurance. We see that that would be a minimal increase to enhance an important human right.

Mr J. B. Nixon: I understand your point; I think it is well presented. I just wanted to explore some alternative situations with you.

Mr Kormos: I do not know whether you people were able to watch what happened yesterday, but the minister made his opening statement and he saw fit to take shots at Ralph Nader, for instance, who has expressed his concern about the gross injustice of this legislation. He took shots at Mr Bates from People to Reduce Impaired Driving Everywhere, a gentleman who has been a leading member of the community in expressing concern about the impact of motor vehicle accidents and drunk drivers on so many people and families. He also took shots at Fair Action in Insurance Reform, and not so much at FAIR but at some information it had distributed about the absence of compensation for emotionally or psychologically injured people in this legislation.

The government has been very careful at every step of this scam to try to tell us that there has been consultation. You have expressed some concern about the absence of any compensation, short of the no-faults, and most of that—let's face it, when they talk about expenses for psychological or psychiatric treatment, in view of the new OHIP regime that we have, by and large, those are going to be dealt with by OHIP and not by any no-fault provisions.

So in view of the fact that the government has insisted that there has been consultation, and in view of the fact that you are the Canadian Mental Health Association, Ontario Division, and this is supposed to be made-in-Ontario legislation, I am wondering whether you can tell us who from your organization was able to participate in formulating the threshold that indeed excluded consideration of emotional or psychological injury.

Mr Richardson: As an association, we have not been the recipients of shots of any kind, which gives us the impression that perhaps we will be more successful at negotiating than others. As is indicated in our brief, we had a personal meeting with the Minister of Financial Institutions and his staff, we had very detailed discussions about this and were informed that there was a good possibility that there would be consultation—community consultation, organizational consultation—which we were invited to bring, as is indicated in our brief, to the Ontario Psychiatric Association, the Ontario Psychological Association, the Advocacy Resource Centre for the Handicapped and so on.

Mr Kormos: What input did you have in formulating the threshold as it is expressed in the bill now?

Mr Richardson: We were not aware of any specific opportunity to participate prior to the preparation of the bill.

Mr Kormos: Oh, so there was no consultation with you with regard to the threshold prior to this bill.

Mr Richardson: There could indeed have been consultations, but not with us personally.

Mr Kormos: You are not aware of anybody else.

Mr Richardson: Not with our organization specifically.

Mr Kormos: Holy cow. Are you aware of any consultations with anybody else who would represent those interests?

Ms Belanger: It was only subsequent to the meeting with the representative from the Ministry of Financial Institutions that we were able to voice our opinion as to what the amendment to the threshold, as it is, should be. That is the only input we have had.

Mr Kormos: Wow.

Ms Belanger: Perhaps at this point, I could indicate to you what we would propose the amendment to be to clause 231a(1)(b) of Bill 68; that it be amended by adopting the wording used in the benefits schedule, as follows: "permanent serious impairment of an important bodily function caused by continuing physical, psychological or mental injury," simply taking the "mental" and "psychological injury" from the benefit schedule and putting it into the threshold. That is solely our purpose here today.

Mr Runciman: I want to agree with Mr Kormos in expressing some concern about some of the language used by the minister yesterday,

especially dealing with some of the groups that have been somewhat concerned about this legislation, and yours is one of them, in respect to this particular element in the legislation. The minister suggested that the critics in respect to the psychological injury aspect had misled the public. I am not sure if you want an opportunity to respond to that or not, but I would be glad to provide it.

I gather from the comments that have been made in response to some questions that the concern on the government side appears to you, anyway, to be essentially one of costs and how inclusion of psychological injury is going to impact on rates across the province. You are suggesting that it would be minimal, at best. Do you have anything to back that up? Have you taken a look at the verbal threshold system in Michigan and what its experience has been that can support the case you are making in respect to its impact on rates?

Ms Belanger: We have looked at the verbal threshold system in Michigan, but we do not have any statistics available to us. The only statistics available to us in Canada would be those available to the average lay person, which would be items such as the Insurance Law Reporting Service or the Goldsmith Consolidated Tables of Damage, for example, but I believe those statistics are available to the insurance industry.

The reason we use the word "minuscule" is that the representatives from Michigan have indicated that because this threshold is so high, probably the highest in the world, the physical injuries will not get to it, let alone the psychiatric sequelae of the physical injury.

Mr Runciman: You are not here to complain about the threshold as it is presently structured, only the fact that you are not included in the threshold.

Ms Belanger: Only the fact that psychiatric sequelae from motor vehicle accidents that do not have a physical originating force are excluded. The rest of the threshold is not our issue.

Mr Runciman: You mentioned in your submission, and we have heard this from others as well, about the possible conflict with the Charter of Rights and Freedoms. I am wondering, have you also taken a look at the Ontario Human Rights Code to see if there is any possibility of contravening that code?

Ms Belanger: Our understanding would be that the Ontario Human Rights Code is specific in the criteria that one can be discriminated against.

I think the crux of our argument lies under the equality-before-the-law provisions pursuant to section 15 of the charter.

Mr Johvicas: If I may add to that, we find that the Ontario Human Rights Code is a bit wanting in this area, that it is not empowered to look at legislation and laws and assess whether they are discriminatory, based on all of the normal things that we are concerned about, race, ethnicity, religion and what not.

It seems a little too limiting and too limited and I think that is a disservice to the Legislature of Ontario in that it would seem to me normal that the Legislature and those people who draft the legislation for Ontario would normally refer it or get a good opinion from the human rights commission and assess it with the code to find out if the legislation is in accordance with the Ontario Human Rights Code. Because it is not as wide a scope and does not concern laws and legislation per se but tends to be a little more defined pertaining to accommodation and employment standards, I think it does not serve Ontario well, certainly not as well as the Canadian Charter of Rights and Freedoms.

Mr Runciman: I think it is a little ironic, having sat through the Bill 2 hearings and the amendment to that bill dealing with human rights and risk classification changes, to try to eliminate discrimination in the auto insurance field. We had some very lofty words from government members of that time, even though it was going to have a significant impact on rates. We went ahead with it, forged ahead with it and ultimately had to back off because of the impact on rates.

I would like to have one quick question of the parliamentary assistant, if that is permissible, related to this delegation.

The Chair: Could we save it until the end?

Mr Runciman: The end of what?

1030

The Chair: The end of the morning presentations so that we do not get too far backed up, depending on the length of your question and the length of his answer.

Mr Runciman: It requires a yes or no answer.

The Chair: Okay. If he can answer, sure.

Mr Runciman: I just want to ask him if the ministry would favour, or does it have strenuous objections to, the amendment proposed by this delegation?

The Chair: I do not know whether you can give a yes or no answer to that.

Mr Ferraro: When somebody can give a one-word question, I can probably give a one-word response.

The answer to Mr Runciman's question is not an easy one, except to say that when we drafted this bill, there was a lot of information, a lot of input, whether it was from submissions to the Ontario Automobile Insurance Board or various groups and so forth before the fact, and indeed there will be after the fact. Quite frankly, it was drafted in a strict way, precluding the type of psychological tort that is being requested by the CMHA. That is obvious.

There is a direct relation to cost. We think we have struck a balance. We think that what we have done is in conformity with the Charter of Rights and Freedoms and the Human Rights Code. That is our best advice. We respect their opinion.

We no doubt will be hearing a lot more on this particular aspect of it. Mindful of the fact that some psychological injury will indeed pass the threshold, I doubt whether or not any and all psychological injury will be allowed at this juncture, but certainly we will be hearing more on it and looking at it very carefully.

The Chair: I am going to thank the presenters for their presentations this morning. It was very succinct and concise for the committee's consideration.

John Bates, welcome to the committee. You have our undivided attention for the next half-hour. You can use it all for presentation, leaving no time for questions and answers, or you can take whatever period of time you would like for presentation and follow-up by questions, comments and discussion from the committee. We are in your hands for the next half-hour.

Mr Bates: You may well be able to pick up some of the time you have lost on the other one.

The Chair: We want to give everybody his full half-hour. If we have to sit over the lunch hour, that may be our loss—and gain in terms of what we ate over Christmas.

PEOPLE TO REDUCE IMPAIRED DRIVING EVERYWHERE

Mr Bates: At the outset, let me say I am not an expert in insurance and do not pretend to be. We are probably experts in taking care of victims of car crashes and may be experts in reducing impaired driving. This is sort of peripheral to us, to what we really do. Nevertheless, it is very important.

Let me say that PRIDE, People to Reduce Impaired Driving Everywhere, is a group of

concerned citizens, including victims—mostly victims, I might add—formed to further the conviction that impaired driving is criminally unacceptable and to promote appropriate public policies, programs and personal accountability. Our only goal is to stop impaired driving.

We are the official Ontario chapter of MADD, Mothers Against Drunk Driving. We were first formed about eight years ago. We are now a province-wide organization with chapters and adherents across the province. We are incorporated under the laws of Ontario and we are a registered charity.

Our concerns about the recently announced proposed Ontario motorist protection plan stem from the fact that we are a victims' group. Victims' rights constitute a very important part of the work we do. We feel that victims may lose some very important rights under the no-fault scheme. We are also on the steering committee of COVA, the Canadian Organization for Victim Assistance. It is a very basic thing for us.

The right to sue, the right to claim compensation from those who have injured us, is a very basic right which should not be tampered with lightly. Because victims are really nonpersons in the criminal court, the only place they can seek redress from those who have injured them is in a civil case. Losing this right is not in the best interest of most automobile crash victims. I think some of the insurance people call that the revenge factor or something like that, but when a child has been killed you do not want to leave it up to a bureaucrat to say whether or not there will be compensation.

In this respect, Bill 68 discriminates against victims of automobile crashes. Those victims of crashes of boats, snowmobiles or other vehicles retain their right to claim compensation through the courts, but those involved in automobile crashes lose that right. It does not make much sense to us.

For example, my cottage is on the shore of Pigeon Lake with has an access road behind it. I was hit by a drunk in his boat. I could have sued him, but if the same person had hit me on the access road behind, under Bill 68, I could not. Why?

Another anomaly we see is a crash between, say, a bicyclist and an automobile. It looks as if the automobile driver could sue the cyclist but the cyclist could not sue the automobile driver. I do not know which way that would work, but it would apply to snowmobiles and all kinds of vehicles, all terrain vehicles and combinations.

From our perspective, the very term "no fault" is a contradiction in terms. Clearly in an alcohol-related crash, the impaired driver is very much at fault. We maintain there is actually intent. If somebody goes into a bar, with his car in a parking lot, and comes out and drives the car, he intended to do that and he should pay the penalty for it.

A system of automobile insurance that would compensate impaired drivers is quite unacceptable to us, or to any other thinking or responsible person, for that matter. The new legislation states that convicted and impaired drivers will not receive compensation but at the same time states that persons involved in any crash must start to receive compensation within 10 days, including the impaired or irresponsible driver who caused the crash in the first place.

We have had some cases that have gone on for six years and have gone all the way up to the Supreme Court of Canada and back down again. Finally, the persons was convicted six years later. Under this bill the way it is now, the impaired driver would have received his \$450 a week for six years. Then finally they would say, "Oh, no, you shouldn't have had that." That is a great loophole in this thing as far as we are concerned.

Second, the so-called threshold appears to be designed to deliberately limit compensation paid to accident victims. The threshold introduces an unacceptable air of uncertainty about who will and who will not be able to sue. How, for example, in the very early stages of a victim's recovery, can anyone determine if an injury is permanent or not?

For example, a man telephoned me—and I could not understand him. This is almost a typical case. I called back to the hospital, the Toronto Western, as it turned out, and I was told the man was involved in an impaired-driving crash. As he went through the windshield, his face was torn off. Is that a permanent disfigurement under the threshold or not? Theoretically, initially, you would say yes, but does it not depend on the skill and success of the plastic surgeon? It turned out he was all right; they were able to put him back together and you could not see him afterwards.

We have many victims who have been made quadriplegic by impaired drivers and that clearly meets the threshold. We also have countless examples of victims who are in various stages of recovery. Who can say their recovery will be complete and not exceed the threshold or that their recovery will not be complete and they can

meet it? No judge, or medical tribunal, for that matter, can possibly predict these things because recovery may take many, many years of physiotherapy. I would say that most of the people who go to our victim-support meetings now are in some stage of recovery. We do not know, they do not know, their doctors and lawyers do not know and the government certainly does not know whether or not this is permanent. How do you know? You do not know.

We feel that the exclusion of pain and suffering as being legitimately compensatory is harsh and thoughtless. The fact that a mother or a person whose life has been shattered cannot receive compensation is unconscionable.

There is the case where a mother, for example, took her two daughters driving. This is one of our cases; the sister phoned us. They were hit head-on. She had her small seven-year-old in the front seat and her young five-year-old in the back seat. The police were able to get the mother and the seven-year-old out. He watched his mother die. The young boy, the five-year-old, burned to death. What happens under Bill 68 to that seven-year-old boy? What happens to the father under Bill 68? At the moment, under the tort system, for the pain and suffering and so forth, they can sue. I do not know what we owe that young seven-year-old boy. He is now about 11. We owe him something, and Bill 68 I do not think would compensate him.

Third, if press reports are accurate, students, housewives, retired people and others in society who have no earned income may be relegated to the insurance Facility Association at greatly increased rates, not because of their driving record but because their insurance companies may consider them more expensive risks because they have no income protection plan. That is because other income protection plans must now pay before the automobile insurance company must pay, and this group has no such plan; that is, retired people like me. We have asked the government about this aspect and to date have not received a satisfactory answer.

1040

Another one we have not got an answer to is: Under no-fault, who will stand up for the victims? When a call comes in to us, we really have three things to do. We try to help victims survive, to get on with life and to dare to dream again. That is what we are trying to do. Immediately after an impaired driving crash, most victims are reduced to mindless confusion. They are in no condition to deal with an insurance adjuster, who all too often is among the very first

in the emergency ward. That happens frequently. Somebody is lying there half-dead, and the insurance adjuster comes in and says, "Sign here." It is ridiculous. That is why we try to determine at the beginning if victims have notified their doctors, what kind of support they have from family and friends and whether they have a lawyer.

The lawyer is a vital part of the recovery process. Regardless of what we think of lawyers—it is a love-hate relationship possibly—a lawyer becomes the muscle of the victim. He is the one who knows their rights; even under Bill 68 he still will, I guess, but his role will be greatly reduced. As I say again, who under no-fault will stand up for the victim? Certainly not the insurance adjuster. We have asked the government this question again and again and have not had a satisfactory answer.

This plan is being introduced as a method of controlling rising insurance premiums. However, premiums are a function of the crash rate, not the insurance system. We have been saying this for a long time. For example, by simply raising the drinking age, there is every reason to believe that impaired crashes involving teenagers would drop by 17 per cent. That is what happened in every state in the United States which raised its drinking age to 21. They now have a universal drinking age of 21, with a consequent 17 per cent reduction in teenage crashes. If we could save 17 per cent of the young lives we are losing now, if we could prevent 17 per cent of the impaired crashes our young people get into now, we would do more to lower insurance premiums than by introducing Bill 68.

We have asked the government many times to simply form a task force to look at this, to examine the possibility of raising the drinking age. We have been doing this for eight years now. Maybe we are wrong. Maybe every highway safety organization in North America is wrong. Maybe the Addiction Research Foundation, the Insurance Bureau of Canada, the Ontario Medical Association, the Congress of the United States, the National Highway Traffic Safety Administration, the General Accounting Office in Washington, the International Association of Chiefs of Police and the Supreme Court of the United States, to name but a few, are all wrong. And maybe they are not wrong. But let's at least make an effort to find out.

The government's refusal to form a task force on the drinking age is like the bishops who refused to look through Galileo's telescope because they were afraid he might be right. The

tragedy here, however, is that their reluctance is costing too many young lives needlessly. It is also putting an upward pressure on insurance rates, by implication.

By introducing a graduated licence system, we could eliminate the problem drivers from the traffic stream and make our roads safer for us all if we could make sure that only those who can drive safely can drive at all. Surely that must be the thrust of lowering insurance premiums.

Permanent licence suspensions for repeat offenders: Zero blood alcohol content for all drivers, not 0.08 or eight milligrams for every thousand millilitres of blood, as we have now. No alcohol at all in your blood.

Administrative licence suspensions and many other sanctions that we have been calling for would go a long way to reduce the crash rate and insurance premiums. It must be clear that the most effective way to control insurance rates is to control the crash rate, but until the government is ready to implement strong measures to control the crash rate—and regardless of what was said yesterday, it has not made the efforts to control the crash rate that we have been asking for—and to make our roads safer for us all and to make sure that only those who can drive safely can drive at all, as I have said, any statements about lowering insurance premiums sound very hollow. Until we can get at the real problem here, saying that we are going to fiddle around by reducing compensation is wrong.

The anomaly here is that the statistics seem to indicate no-fault will increase the crash rate because of the perception that responsibility is lessened. PRIDE members are often the end users of the insurance system—in fact, they generally are—and as such we have a different perspective from almost anybody else. When one is standing by a loved one's hospital bed or in a funeral home, insurance premiums really are not very important.

If we need a Cadillac system, then let's get a Cadillac system. Compensation must be fair, must be adequate and must be swift. While we feel that auto insurance rates must be controlled, we also feel it is wrong to control them by reducing compensation to innocent victims. Thank you very much for your attention.

Ms Oddie Munro: Thank you very much for your presentation. I think it is fair to say that the hearings, as has been indicated already today by two presentations, are meant to communicate to this committee and to the public some of the researched efforts that you yourself have gone into and to assure the purchasers of insurance

policies that they indeed will be covered in the manner in which they desire. I felt it was important to start off by saying that because I think indeed there is a lot of misperception that will be fuelled by inappropriate comments put in from time to time.

I would like to ask two questions of you. I think the minister yesterday indicated that many interministerial initiatives have taken place, which will respond to your concerns that crash rates will go down if in fact the responsibility for inadequate or inappropriate behaviour on the part of the driver is assured by, for example, the Solicitor General (Mr Offer), the Attorney General (Mr Scott) and the Minister of Transportation (Mr Wrye), through higher fines, better driver safety promotion and drunk driver offenders acts, which will of course be hardened.

I am wondering what your perceptions of those initiatives are in relation to your comments. Then, specifically on page 4, I am wondering if you can indicate to me what statistics you have or are aware of that indicate the crash rate will be increased because of the perception that responsibility is lessened. I say that because this committee is very much asking that additional information that we may not have is brought to our attention.

Mr Bates: The information we get coming from Quebec, where they do have a pure no-fault system, tends to indicate—I will admit those statistics may be soft—that there is an increase in serious crashes and impaired crashes. The latest figures I saw, I think Quebec has three times the crash rate we have and double the national average. Now whether that has to do with the insurance industry or not, I do not know. Maybe it is just the way they drive.

Your first question was, do we think the initiatives they have taken will help? Yes, of course. We laud anything that will help lower the crash rate, because there is certainly a parallel that as the crash rate goes down, impaired crash rates go down as well.

Certainly, I do not think simply raising fines for speeding is going to lower the amount of speeding that is going on because somebody tends to get caught once. I think we had 600,000 speeding offences in this province last year; it outweighs all other Highway Traffic Act offences by far. The thing is, when you catch somebody, they do not do it, but the other 500,000 people do. I do not think raising those—people are more worried about the points than the fine anyway.

Ms Oddie Munro: Maybe I could ask a supplementary. How are you defining crash rate? I ask so we might get a better idea of the variables that would have to be looked into.

Mr Bates: From our perspective, it is the serious injuries and deaths. If people would stop killing themselves on the road, we would simply fold up and go fishing.

Mr Kormos: You are undoubtedly aware that the Minister of Financial Institutions (Mr Elston) saw fit to quote you yesterday. I am glad he did, quite frankly, because what he quoted was dead-on, if you will. You said, "We feel that Ontario's proposed no-fault insurance plan does nothing to keep dangerous drivers off the road. We"—PRIDE and yourself—"want to see crash rates lowered, not insurance benefits." I tell you, Mr Bates, you are dead-on. You have hit the issue right on the head.

My first question is perhaps more so to the parliamentary assistant. The minister quoted you and then appeared to crap all over you at least a little bit, along with some of his other critics, and he talked about all those grandiose things that the government was supposed to be doing. They increased speeding fines. You are quite right. The highest speeding fines in the world mean zip when there is nobody out there to enforce them and when the courts cannot accommodate the offenders should they choose to plead not guilty.

1050

I recall that great September press conference up in Downsview when all five ministers were there and they talked about the additional 100 OPP officers to patrol Highway 400 and Highway 401. They talked about public education campaigns to promote seatbelts and the daytime use of headlights. They talked about driver safety promotion in the workplace; that is pretty obscure, I have to confess. They talked about the new program requiring drunk driver repeat offenders to seek treatment.

We saw the amendments to the Highway Traffic Act for the fines. Where are the rest of these programs? Where are those 100 police officers? Where are the educational programs? Where is the driver safety promotion in the workplace? If they are there, they are so sotto voce that most of us have not heard of them.

Where is the most fundamental correction? Where is the reform to the whole attitude and approach about who is going to be allowed to drive in this province and about the fact that we have not fundamentally altered our driver training and driver licensing program from the date of its inception? Driver training seems to be more

intent on showing people how to pass their exam than in how to drive safely or properly. The government has not done a single thing to ensure that safer drivers and competent trained drivers are given driving licences.

Mr Bates: That is exactly right. In this province right now, you can get a driver's licence not ever having been on the road. Your uncle can teach you to drive in the Loblaw's parking lot. You can then go out to the John Rhodes Driver Examination Centre in Etobicoke by Pearson airport, show them that you can do a three-point turn and you can parallel park. You can be 16 years old and load the kids into the car and go out and drive Highway 401 and Highway 427 at five o'clock if you want to, and that is absurd.

Our driver testing system has not been brought out of the 1920s. As it came in initially, we had drivers' licences because cars scared horses. There was no test that came in until about the 1920s or something like that. It has not gone beyond that.

Mr Kormos: It is more than absurd; it is pathetic and it is murderous. The inadequacy of this government's response to the legitimate criticism of people like Mr Bates has taken more lives, I am convinced, than any other single phenomenon on the roads of this province.

The saddest part of it is that it does not require legislation. It could be done by regulation. It could be done virtually overnight. Would the parliamentary assistant please address that along with the complete lack of action on those other promises, or are they, once again, typical oxymoronic Liberal promises?

The Chair: All in under a minute and a half.

Mr Bates: We have been asking since 1986 for a real graduated licence system in this province where we could take young people and new drivers and simply say: "You can drive. You have to have an adult licensed driver in your car and you cannot drive in the dangerous period after dark." Once they have gone through that with no points or infractions and so forth, they move on to the second one where they can drive but still cannot drive with a passenger in their car. Then, finally, after advanced driver training, where they learn panic braking and skid control and so forth, they have an unlimited licence to drive.

In the meantime, what we have been able to do is weed out the misfits and the people carrying bad baggage around their life which they translate to their driving and get them off the road by suspending their licences and impounding their cars if necessary. That is the only answer.

Until the government is ready to make these hard decisions and do these things, we will not lower the crash rate and will not lower the premium rates either.

Mr Ferraro: Very quickly, first let me thank you for your presentation. I am not capable of using some of the animated and sometimes outrageous, I might say, rhetoric of my colleague in opposition, but let me say that the minister's response yesterday was exactly that: a response. There was no intent to insult anybody. I think everyone in this democracy has a right to put his case forward, and I believe the minister did that.

To deal with some of the queries, quite frankly, I categorically disagree with some of the statements made by Mr Kormos, which will not be a surprise to anybody. It is 115 OPP at a cost of \$15 million to the taxpayers, and indeed many of them have already been hired and are in the process of being hired.

Mr Bates and just about everybody else in the room will know that the legislation does make some significant changes dealing with drunk drivers, albeit perhaps not significant enough. I am sure Mr Bates and his association and many others, quite frankly, would agree. The idea of the graduated licence is—and forgive me, Mr Bates, but I am going to give you the response that you have probably received many times—under investigation by the Ministry of Transportation. We have already tripled some of the fines.

There is no question that in taking this balanced approach we think we have taken there is a give and take. The give, of course, is that we have to get the insurance company to provide reasonable premiums for the people. Quite frankly, we think we have done that in a balanced approach.

There is no question, in conclusion, that many of the enforcement aspects of it and much of the education that has already commenced will be more evident to the general public in the near future, hopefully as this bill passes and will be implemented.

Mr Bates: There have been some government initiatives. Certainly we have been pushing for an extended RIDE program for a long time. That is the one thing that does work. The fear of being caught is still our greatest—

Mr Sterling: Thank you very much for your presentation, Mr Bates. For over a year now, I have been after the Minister of Transportation and the Minister of Culture and Communications to revamp the whole area of driver training and driver education.

It was brought to light in particular because I lost a great number of young people in my riding just through a series of accidents. I was very concerned about it, and I talked to a woman in my riding who is very knowledgeable in the area and is probably going to get the first university degree in Canada relating to driver education. She brought to light to me the fact that virtually everyone who tries to become a driver instructor in Ontario is passed. Basically, the qualification is that you pay your money and you get your ticket. The whole system is woefully inadequate.

What I have found in terms of the response from the minister is that the ministry does not recognize that there is a problem. Is that your experience with regard to the whole driver training area and driver education?

Mr Bates: Yes. We have a high school driver training system, for example; there is no indication that those who are graduates of the high school system are any better drivers than those who are not. If you have a proper planned thing where people learn how to drive a car and not just how to get on with driver instructors, that will then work, but the present system does not.

Mr J. B. Nixon: You referred, Mr Bates, to evidence which suggests that no-fault driving induces less care and responsibility on the part of drivers on the road. Are you aware that it was looked at by Mr Justice Osborne during the course of his review and that he said, "While it sounds good, it is not empirically demonstrable"? I say "not empirically demonstrable" because those were his words.

In other words, when you look at the facts and the hard reality and put aside the emotion and the fear, the no-fault compensation systems do not lead to irresponsible driving, particularly when we have a program here where rating and premiums are based on fault. It is the compensation system that is no-fault, but the premiums you pay and the penalties you pay for bad driving and for impaired driving are based on fault, and that is the serious deterrent.

Mr Bates: I think I stated that we felt those statistics, while they appear to be that way, may be soft. We are not taking a stand on those statistics. They appear to be soft statistics. I do not know why they have a higher crash rate. Whether it is that or not, I do not know. What does cause it? It is other attitudes.

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Mr J. B. Nixon: A second question, very quickly: I think all of us on this committee share your concern and are empathetic with the situ-

ation of victims of drunk drivers' malfeasance or wrongdoing. You asked rhetorically the question, "Who will stand up for the victims?" You talked about the seven-year-old boy. It is a heart-rending situation, but I tell you, I am not sure that I would want to leave that seven-year-old boy to the hands of the lawyers—assuming that his grandmother or grandfather has enough money to hire a lawyer—and push him through the court process, and maybe, by some quirk, at the end of the day, get nothing, even though there had been a wrongdoer. Those situations happen too, unfortunately.

Mr Bates: I agree with you, but would you leave him in the hands of the insurance adjuster? Anybody who has had a fender-bender accident knows—

Interjection.

Mr J. B. Nixon: I am happy to reply, Mr Chairman, very quickly.

The Chair: That was not an interruption to allow you to reply; that was an interruption to thank you for your questions.

Mr J. B. Nixon: No, I do not want to leave put you in the hands of the insurance adjusters either, and this program does not do that.

The Chair: Mr Bates, thank you for your presentation.

Mr Bates: Thank you very much.

The Chair: Mr Lyndon and, I believe, Dr Miller, Mr Kennedy and Mr O'Donnell.

I believe the brief that Mr Lyndon will be reading from, or parts thereof, is in your package. It is exhibit 70.

Mr Lyndon, you have half an hour of the committee's time. I think you have been sitting at the back of the room, so you know the procedure. If you want to leave time for questions and answers, we are in your hands.

INSURANCE BUREAU OF CANADA

Mr Lyndon: I intend to touch on the brief and go through it in about 15 minutes, and I would welcome questions in the format that you have established.

The Insurance Bureau of Canada represents some 90 to 100 corporate groups that market and underwrite between 90 per cent and 95 per cent of the auto insurance in this province. By way of introduction, I would say that I assume some of our companies will be coming to see you individually. The things that I am going to refer to are not necessarily generic without numeric substance and empirical evidence, but I speak as a trade association that has been involved to the

point that I sometimes find myself agreeing. I do not mind agreeing with John Bates, whom you have just heard, or even, on occasion, with Mr Kormos. That sometimes troubles me, but not always.

I would like to turn to the first page of our brief and take a quote from Mr Justice Osborne's report from 1988. Here was his lordship acting as a commissioner, speaking in terms of what insurance is, and you will see, in the middle of the page, he cites, "Premiums paid by an insured should reasonably reflect the degree of risk the insured imposes on the system."

Insurance, like any other service or product, is a cost, and that is something that we must stress: cost. It is possible to institute a very generous system of compensating victims, but clearly, the higher the benefits, the higher the costs to the motorists of Ontario.

Over the last several years, we have, within the industry—and many of you have been involved in the process, in the Slater commission several years ago that really got into the liability crunch; Mr Justice Osborne's charge; the Ontario Automobile Insurance Board hearings, the main hearings and then the subsequent reference decisions. All of those matters have, I think, brought to the attention of the Legislature and, finally, to this government that some of those costs are real. I honestly do not believe that the government, the ministry, the people who are there now and their predecessors really believed this when we said these costs were real. They got into it in these various ways, and I think they finally acknowledged that the dollars that are paid out are real dollars and, regardless of the system you have, the dollars will vary.

I think what they have come up with is a balance, a compromise, that would not be our first suggestion, but I think it is a workable solution. I must stress that I think it is a workable solution that will provide an affordable product for the drivers of Ontario.

I would like to turn, on page 2, to price. You will see that our appendix I sets out a present average premium rate in Ontario of \$758. I notice the ministry and the minister yesterday talked about \$776. I think we are in the ballpark. Then, when they went to a 1990 average, they hit \$807. I assume they got that by taking half of the zero and eight and extrapolating, getting \$807. I do not quarrel with that.

Rates would have had to go up 25 per cent, 30 per cent. You know the evidence. I know all of you, doing your chores, will have read the

Ontario Automobile Insurance Board reference decision.

I would like to say that I see in Ontario a tolerance level in the population of between \$800 and \$900. That is \$67 to \$75 a month. I think one of the things, along with price, that Bill 68 does, which we think is positive, is provide for a periodic payment situation. I know I would get pretty shocked if I got a utility bill for \$1,200 once a year. I think, along with a proper system, this payment schedule format is a good one.

You can see, in item 5, the rates. You can have whatever system you want, but I allude to the tolerance level of the public because, like the late Peter Finch in the movies, some people in Ontario are as mad as heck—and I will not use the other word, Mr Kormos, because I believe in parliamentary language—and they will not take it any more. I run into it in all parts of this province.

I believe, as I have said at the top of page 4, that Metropolitan Toronto risks can be kept to an average of eight per cent—I think that is a doable package—and flat in the rest of Ontario. I do not have the filings that the auto board has, but from our examination of the price structure of Bill 68 and the program that we believe we see in it, I think that is a realistic first attempt. I have not always been able to say that about the efforts of this government.

The whole rate question has a very firm format in section 74. I think, if the commission does its job fairly and properly, the industry will be able to provide the product and will do it, as indicated, in the spirit of the liner notes.

I want to turn to delay. Much has been said about the need for speedy payments. Under the tort system, both sides must often retain lawyers and go through a time-consuming, anxiety-laden and uncertain litigation process. Payments can easily take three years, and even then there may be appeals.

I have looked at the last 10 reported auto cases in the Ontario Reports. I am not going to try to convince my legal colleagues on your panel that this is a great summary, but it is the best that I have on short notice to do that. In the last 10 reported cases in the ORs, the average lapsed time from accident to judgement was five years and five months. I think that is an indication of the current speed of delivery.

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Bill 68 requires insurers, regardless of fault, to make payments on an expeditious basis. The insured has the option of taking all disputes to arbitration or to court. However, in the event of disputes, an arbitrator wields a big stick in terms

of preventing delays pursuant to his or her powers under section 65 of the bill.

I think the sanctions in the bill, which at first look draconian, are very apt. Any time you see two per cent per month compounded, I think you have a meaningful sanction and people will get on with expeditious handling of claims.

I think sections 65 and 79, which you will look at in clause-by-clause, are satisfactory powers of supervision. The industry will be banded a few times; the point will be made.

On the question of equity, I could cite you as many, and counter, arguments as other critics of the bill have. I will leave with you for your examination a package of examples, and I am sure we will meet to discuss them on another day.

I would like to mention three things that really arose from what Mr Bates has just mentioned to you. We strongly support three aspects of his proposal: raising the drinking age, a graduated licensing system and you have got to be tougher on drunk drivers.

We suggest that those charged with any Criminal Code offences, including alcohol offences, not be able to collect their income replacement benefits until they are acquitted of the charge. At that time, such drivers can collect their back benefits, plus interest. That is not the way the regulation under Bill 68 currently reads. However, these drivers should still receive rehabilitation and long-term care.

The adversarial system: While trained as a lawyer, I have come to learn that the law must progress and society must move on. It is a good system, but it is one that can be reviewed.

I think it is too expensive and too slow. In the late 1950s and early 1960s, we saw the progress in the civil justice system from reliance on the courts to administrative tribunals. We are going to have to find other solutions. Mediation and arbitration have gone a long way.

I think the first-party system that is provided by Bill 68 is a good system. It allows for dealing with your own client. I think it will take some dollars out of the system. Certainly as an insured in an accident, I would much rather deal with the person I bought my insurance from than have to go to him and over to him and back to her. It will avoid an adversarial relationship, and I think it makes for a better product.

I think the administrative expenses will be cut. I think I would side with the matters alluded to by the minister yesterday.

I look upon myself as a constructive critic of this bill, yet I find myself on occasion saying, "Well, it's 90 per cent right." Maybe I differ with

Mr Kormos just a bit that way, and Mr Fuzzy—excuse me, I cannot get used to Mr Runciman's chin.

Legal fees and disbursements currently take out over \$500 million a year. During the auto board hearings, the figure of \$400 million was correct; and over a period of 18 months, with the farm and commercial vehicles being in there, it is \$500 million. Bill 68 will reduce that amount by 40 per cent, with the very serious cases which remain in tort making up most of the \$300,000 in legal fees and disbursements left in the system.

In conclusion, no auto insurance system can be perfect. Bill 68 is a compromise. I believe it will keep the prices down. Instead of rising 25 per cent to 35 per cent in the current system, as found by the auto board, I think the eight per cent is realistic.

Second, Bill 68 will heavily penalize unreasonable delays by insurers in the payment of no-fault benefits.

Third, it puts equity into the system. Seriously and permanently injured people can still sue and receive significantly higher no-fault benefits when needed most.

Fourth, Bill 68 introduces a first-party, non-adversarial aspect into the system. Insurers will be encouraged to work with their own insureds to develop rehabilitation.

Fifth, expenses should be reduced and savings passed on to consumers in the form of lower prices than under the tort system and higher no-fault benefits.

Sixth, if the regulation to Bill 68 is amended, as we suggest, to punish the criminal behaviour, it will serve as a deterrent to antisocial and highly dangerous conduct.

It is a good compromise. I welcome your questions.

The Chair: Thank you. If we wanted to keep to true parliamentary language, it would be "the member for Leeds-Grenville," but not "Mr Fuzzy."

Mr Runciman: It is regrettable that Mr Lyndon cannot spend more time with us, because I know most of us would have quite a number of questions to direct his way. I would like to know what was the loss figure, from the industry point of view, in Ontario, related to the government's risk classification shemozzle several months ago. What were the industry losses incurred in that bit of business?

Mr Lyndon: Do you mean the amount of money we spent responding?

Mr Runciman: Getting ready for that change that never occurred, which was pulled at the last

minute by the minister. I have heard a variety of estimates, as I am sure you have, from \$150 million to \$200 million to \$400 million.

Mr Lyndon: I think, sir, those are high. I do not have any qualms suggesting between \$20 million and \$25 million in hard and soft dollars. There was a lot of systems work that was going on that would not totally be related to that. I do not have any trouble with saying \$25 million was basically diddled away.

Mr Runciman: The figure I heard most commonly was \$150 million, which was quite similar to the \$143 million, I think the figure is, in tax breaks that the government has opted to provide the industry.

An element of this legislation that deals with the industry or, I am not sure, brokers or whomever, is determining fault. Briefly—I know we have very limited time—how do you feel that is going to work and are you quite confident about the fairness of that element in the legislation?

Mr Lyndon: An intercompany settlement chart that will be used?

Mr Runciman: The determination of fault, yes.

Mr Lyndon: Fault will be determined in a contractual way among the companies. Certainly no insured will be bound by that process. If they are, it is a flaw, and I am sure the system advocate within the government process, within the commission, will see to it that the individual does not suffer by that system.

Mr Runciman: Are you suggesting, and I am not clear of this, that the dispute resolution process established in the act is going to deal with concerns over fault determination as well?

Mr Lyndon: There are two aspects to it. I think those questions would be better addressed to the ministry staff than to me.

Mr Runciman: But your understanding of it is—you are here supporting the bill.

Mr Lyndon: My understanding of the administrative process is that there will be a resolution among the companies, as well as the individual's having access to a mediator or an arbitrator within the commission.

Mr Runciman: How much time have I got? Two minutes?

The Chair: You have two and a half minutes.

Mr Runciman: I have a couple of quick things. We heard earlier from the group that appeared before us dealing with psychological and psychiatric illnesses about its involvement,

or lack of involvement, in the deliberations leading up to this legislation. What was the involvement of the industry or of representatives of the industry? What was their involvement in this process?

Mr Lyndon: Well, I can speak for myself and the bureau. I am not sure we did not get in too much of an adversarial role with some of the ministry. We seem to be as much of a pariah as some other people. I do know that on the attempts we made we did not have the access to government that we thought we would have. I know individual companies were asked for various answers to posed questions. Over the last five and a half to six months, I have wondered about the effectiveness of myself in my role because I obviously have become a pain in some people's side, neck or wherever.

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Mr Runciman: One final question: This is a major concern of my party, and that is the establishment of this dispute resolution process and the bureaucracy that is going to be involved in it. I questioned the deputy minister last month on what this is going to cost, what we are talking about in bodies and what kind of workload they are going to be faced with. He really did not have any answers, which surprised me when we are only a few months away from implementation of this thing. He was suggesting that about 10,000 to 15,000 might be the case load; that was the figure. I think they have garnered that from New York state.

I have some real concerns about this. We are talking about over six million drivers in the province. We could end up with a quagmire like rent review where we have a backlog of two years and \$40 million of taxpayers' money flowing to try and support what system. Have you any concerns about this dispute resolution system?

Mr Lyndon: Yes, I do. As a former civil servant and deputy minister in another province, I know that if you do not get it right reasonably right the first time in it grows on you like any other carcinoma and before you know it you have a millstone around your neck. I sympathize and agree with your analogy to rent review or rent control. It is incumbent upon the new commission to do everything in its power to be effective, which often means beating up on my members, in the interest of the individual who is entitled to his benefits, but it also has to be speedy, efficient and maybe sometimes quick and dirty. It will be hard to get it up and running without playing into the hands of your concern.

The Chair: Mr Ferraro wants a quick point of clarification before I go to Mr Kormos.

Mr Ferraro: No editorial, Mr Chairman. I would just like to clarify the situation. The accident dispute resolution system is not going to determine fault in any way, shape or form. As Mr Lyndon indicated, the insurance companies hopefully will be providing reasonable charts and that will be determined by the commission. If that is not satisfactory to the consumer or the insured, then there is access to the courts.

Mr Runciman: No individual appeal mechanism?

Mr Ferraro: They can appeal to the commission, Mr Runciman, if they are not satisfied initially, and the commission could then investigate it.

The Chair: Mr Kormos.

Mr Sterling: Who makes the determination?

The Chair: Please, we will save it for later.

Mr Kormos: Mr Lyndon, you suggest that I do not exercise restraint. I will tell you that when I say the drivers of Ontario are getting screwed again, I am exercising a whole lot of restraint because that only approximates what is really happening to them.

Look, an article in the Toronto Star back two days before Christmas indicated that the province planned to force a modified no-fault insurance program on the industry, your industry, the insurance industry. You were quoted in that article. You surely are not suggesting that this is being forced on the insurance industry in Ontario are you?

Mr Lyndon: I am surprised at that word.

Mr Kormos: The auto insurance industry had its own little threshold scheme that it was trying to market back in 1986 and 1987, and indeed to Osborne.

Mr Lyndon: Our first venture into a threshold no-fault was in 1972. I saw it when I was a deputy minister in Alberta and thought it was kind of farfetched stuff at that time. When we appeared before Mr Justice Osborne we spoke to a so-called smart no-fault, if you will. We did not at any time think that a total no-fault scheme, given his terms of reference, was a realistic one.

During the period of then through till now I think it is fair to say the industry has a number one preference for a total no-fault scheme. We spent a lot of time looking at the choice scenario, which was briefly mentioned in the Osborne documents and which Mr Runciman has spent a

bit of time reviewing. Our third choice is a threshold no-fault.

Mr Kormos: What would the insurance industry do to get itself a threshold in this bill that is even more onerous than the threshold the insurance industry had proposed to Osborne back in 1986 and 1987?

Mr Lyndon: We participated in the deliberations between the Ontario Automobile Insurance Board—I think the cost features that have come out in the system have made it mandatory that we try to balance costs in the humanitarianism of a reparations system. I cannot answer your question any more than to say that we participated in an educational process and I think some people finally believe this.

Mr Kormos: That same article in the Toronto Star, and I know that Canadian Press picked it up, has you quoted as saying that car insurance in this province continues to be a losing proposition for insurers.

Mr Lyndon: I can agree with that.

Mr Kormos: A loss is identified for 1987, a loss of \$142 million. I questioned that yesterday because it seems that the OAIB, on the figures that were given to it by the insurance industry, determined that indeed there was a profit in 1987 for the auto insurance industry. I am concerned that the press would have reported that there was a loss in 1987 when in fact the government's own board determined there was a profit, based on the industry's own figures.

Mr Lyndon: The \$142 million loss in Ontario auto for the year 1987 was based on a formula we use that the auto insurance board did not use. It is basically one of whether or not your investment income is apportioned between your surplus or your capital funds and your operating funds. If, for example, the surplus is not separated out, I guess we came close to breaking even.

Mr Kormos: Even the government now appears to be prepared to concede that a public, driver-owned nonprofit system can deliver a product certainly more efficiently—that is what the Woods Gordon report indicated back in the 1970s, one of the government's own studies—certainly more affordably and certainly more fairly, because you are not going to see the premium shuffling going on in a public system and you are not going to see people being forced into the Facility Association, as Don McKay, the general manager, says is going to happen with this Bill 68.

He indicates that because of the avoidance tactics that are going to be used by the insurance

industry, more and more good drivers are going to swell the ranks of incredibly expensive Facility.

Mr Lyndon: Do you have a question for me?

Mr Kormos: If the insurance industry is so unprofitable, why do you not start doing more profitable stuff? Why do you not get into life insurance and household and fire insurance and say: "The heck with it. We're not going to keep batting our heads against the wall. We're not that altruistic and we're not going to be so charitable as to keep on doing this as a losing proposition. Let the government assume responsibility for it in a way that certainly is more efficient, more affordable and fairer"?

Mr Lyndon: Up until about five years ago, the auto insurance underwriter in Ontario went through a period when he sometimes made money and sometimes lost money. For about the last five years mainly with bodily injury up until this year, and property damage is starting to creep up, we saw a continued cost escalation to the point that made it look as though it was a one-way stream to Never Never Land.

I disagree with your political-philosophical bent. I remember when your party brought Mr Bucklaschuk, who was then a minister of the crown in Manitoba. Six months after Bucky, as he is known to his friends and enemies in the political world of Manitoba, went home he lost his job, his party lost the government and the number one political polled item was auto insurance mishandled. I do not think there is any panacea. You can have whatever you want, Mr Kormos.

In terms of the peaks and valleys, I think auto insurers who want to stay in this business obviously want to be here for the day when they can make a reasonable profit. If we do not have a change in the system, there will not be any more. We will have more companies, such as Advocate General this year, that were heavy in Ontario auto and unfortunately have gone under.

Mr Kormos: One more question.

The Chair: You are out of time, Mr Kormos. Thank you.

Mr Kormos: On a point of order, Mr Chairman: What is the time?

The Chair: You have actually had six minutes.

Mr Kormos: Oh, six minutes; I am sorry.

The Chair: Ms Munro and Mr Nixon for five minutes—two and a half each or however you want to divide it.

Ms Oddie Munro: I am concerned. I think you have heard a good deal of debate already on the definition and the responsiveness in dealing with clients' claims on psychological trauma. I wonder if you could indicate to me how you intend, or whether you feel you have the professionals currently within the insurance industry, to deal with such cases or whether you would hire independent professionals, and second, whether or not you have given any consideration to the manifestation time.

I know there is a two-year limit on a client's right to institute court action, but how do you intend to handle a client's need for time in putting down a decision on whether or not he has just reason for psychological compensation?

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Mr Lyndon: How do we estimate the time? I am sorry; I do not quite understand your question.

Ms Oddie Munro: I am a psychologist myself.

Mr Lyndon: Yes.

Ms Oddie Munro: There seems to be a lot of confusion with many people. I think the minister, the parliamentary assistant and the committee have gone a long way in trying to assuage the fears of the community, that indeed we do know what psychological trauma is all about and have ways and means in which we can deal with it.

I am just wondering if you could explain to me how you feel your own industry will respond to those insureds who say: "I feel I am under a lot of stress, pressure, and in my layman's language am suffering from psychological trauma, but I don't know if it is enough. It certainly is below the threshold, but I feel I have a claim." How would that person receive the kind of counselling from the industry that he feels he should be entitled to?

Mr Lyndon: I think there will be an enlightened self-interest, if nothing else, to get on with all aspects of rehabilitation. I am not a professional in this field as you are, but I think the industry will be making a lot more use of rehabilitation of all kinds and I certainly think professionals will be more involved in the early stages of all sorts of dilemmas.

Ms Oddie Munro: I am concerned because I think already we are seeing a lot of fear among the public. On the one hand, they say they would like to keep the rates down because obviously it hits the pocketbook. On the other hand, the insured people want to be assured that their psychological needs are responded to. I think it is

up to this committee, in these hearings, to make it known that you and your association have considered what kinds of action would have to be taken when you start having to respond to those cases that will not be handled by legal representation, outside of the court.

Mr Lyndon: I will certainly get back to you through the secretary of the committee.

The Chair: Mr Nixon, for a minute.

Mr J. B. Nixon: Very quickly, Mr Lyndon, you have alluded to the experience in British Columbia and Manitoba. I recall earlier debates on that subject, and monitoring and watching what was happening in Manitoba and BC when the rates were increasing at greater than 20 per cent a year under public systems. There was a huge public outcry and the respective presidents of the Insurance Corp. of British Columbia and the Manitoba Autopac would stand up and say: "Don't blame us. It's the cost of claims that's driving the price of premiums up." I want to hear your views whether essentially you are delivering any other message or whether you would agree with those comments.

Mr Lyndon: There are costs in any system. I said earlier that you can have whatever system you want to cost. I have some minor quarrels with Bill 68, but I think you and your colleagues would be surprised if there were not a few shots even from a basic supporter.

I think the point you allude to, coming from the crown corporation's senior executives, is really one of there are basically claims in any system and unless you can control claims, and as John Bates says control crashes, you do not have a hope of ever keeping your product costs in line. What Bill 68 does is fundamentally change the system. Unfortunately, I think it has come a few years too late, in our view, and there will be some casualties.

Possibly there are too many companies in the province writing auto insurance. I think a healthy commission viewing the regulation of our industry and writing automobile insurance in this province, like a competitive utility, could go a long way, not to supporting us but to supporting an environment in which we can make a reasonable profit without any gouging in a new tomorrow.

The Chair: Thank you, Mr Lyndon, for your presentation. Professor Hutchinson, if he is in the room, and Mr Ferraro has a 30-second clarification, disclaimer or whatever.

Mr Ferraro: While we are changing delegations, Mr Chairman, Mr Lyndon and Mr Bates

both alluded to the point about whether or not an impaired driver should, at the point of the charge being laid, be eligible for income replacement. The approach the government has taken is that just because a person has been charged with drunk driving or impaired driving—in this country you are innocent until you are proved guilty, so to be consistent we have taken the approach that upon guilt being determined by the courts, then income replacement would not be allowed, but until that point it would be allowed. There is also something to be said about the innocent family of the victim but I will not elaborate.

The Chair: Professor Hutchinson, you have half an hour to use for whatever means you would like, either all in presentation, or if you care to leave some time for discussion, dialogue, that would be appropriate as well, but the half hour is entirely yours.

ALLAN HUTCHINSON

Mr Hutchinson: I do not intend to use up the half-hour with my presentation. First of all, I apologize for the fact that I do not have a prepared statement to distribute beforehand. I was away for the last week and only arrived back last night. I would be happy for people to interrupt at any time, rather than wait until the end.

The Chair: The Chair would prefer at the end, thank you.

Mr Hutchinson: Whatever. I think it is important in looking at this scheme to obviously consider the details, but also to take a wider view and to lift up our heads. It seems important to me that how we deal with the victims of misfortune in our society is a test of our society. It says a lot about who we are and what we aspire to be. If we cannot treat the victims of misfortune well, then we do not serve either individual justice or social justice. I believe that the present proposal is a flawed scheme in a number of ways, but nevertheless is an important move that should be made in compensating the victims of automobile accidents.

I intend to deal with three criteria for judging any system, but rather than speak in a vacuum I would like to primarily direct my remarks against the opposition put forward by FAIR, Fair Action in Insurance Reform. Most of the opposition to this plan has come from trial lawyers. In a series of what I believe are inflated and misleading advertisements they have pilloried the legislation as unfair and regressive. Unfortunately, I believe FAIR has received more than its fair share of

attention. It is important therefore that the record should be set straight.

FAIR claims that this scheme will encourage accidents, reduce benefits to innocent victims and in some cases even permit an innocent victim to be treated worse than a negligent driver who is also injured, and that the tort system is somehow to be preferred for its ability to deliver just and adequate compensation and to ensure that negligent drivers are made to pay for their bad conduct.

These arguments are simply false. They do little credit to the legal profession and even less to the hapless victims of road accidents. Behind the thin veneer of factual analysis, moral principle and legal rhetoric these lawyers seem to me to be fighting a desperate rearguard action in staving off the loss of a very lucrative and reliable source of earnings. Self-interest is even less attractive when parading in the false trappings of civic virtue.

The efficacy of any scheme to deal with road accidents can be assessed in accordance with three criteria of performance: its ability to deter accidents and avoid injury; its capacity to provide adequate compensation to injured victims; its relative administrative efficiency in controlling and channelling costs.

To my mind, the accumulated evidence demonstrates quite clearly that a no-fault scheme is preferable to a fault-based litigation scheme on all relevant criteria. Only one of the four major studies conducted by the Ontario government in the last 15 years has recommended the retention of the fault-based tort system. Even the recent Coulter Osborne report suggested that the establishment of some scheme of no-fault be introduced to make up for the shortfalls of the tort system.

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The first head or criterion to deal with is that of compensation, which after all is the primary goal of any accident compensation scheme. The existing tort scheme is nothing more than a lottery. It is a misplaced lottery to place people who have already suffered in an enforced situation of chance. All that a victim has, even if injured by negligent or worse driving, is a chance that they might recover if they can make their way through the cumbersome, expensive and stressful process of litigation. The tort system is notorious in that if allowing recovery, it under-compensates serious injury and tends to over-compensate minor injuries.

There is great stress. Anybody who has experience of going through the litigation system

knows the stress involved, the stress of simply being in the system and also the delay involved. In the cases that have gone through the system that get that far, an average of over four years from accident to judgement is the statistic and cases of nine to 10 years between accident and judgement are not unheard of. The proposed system clearly provides compensation in a much quicker way than the present system. Moreover, it is more consistent in the type of damage that is awarded, and there is a chart for providing such. Much in litigation is left to chance before judge or jury.

The key fact is that if there is no recovery, which is the vast majority of cases, then the victim has to fall back on his own insurance. In those circumstances there is clearly a vast increase in the benefits available to victims under the proposed scheme than under the present scheme.

Rather than go through what the particular benefits are, which I am sure the committee is more than aware of, there is almost an increase by three times in the benefits available under the new plan to employed workers. It also makes provision for students, the unemployed, retirees and unpaid homemakers. There is allowance made for child care benefit, for long-term care and also for death benefits, which are much more—I hesitate to use the word "generous" because I do not think the proposed benefits are generous, but they are certainly much better than the niggardly payments that are made under the existing scheme.

As regards compensation, the present system simply gives one a chance of recovering even if there has been a negligent driver. Under the proposed system, everyone will recover and in a great number of cases will recover more than they are presently entitled to under the existing scheme.

As regards deterrence, much is made of the fact that the tort system is supposed to have a deterrent effect. It is supposed to act as a disincentive for negligent driving and therefore to reduce the number of injuries. Clearly, this is an important goal that any scheme must take into account. After all, it is much better to prevent accidents rather than to compensate the victims of accidents. However, the problem is, first of all, that there is no evidence that the tort system is any better at deterring accidents than a no-fault system.

Moreover, in considering deterrence one should not simply look at one particular scheme but should look at all available possibilities.

There are enough difficulties in organizing a scheme to direct compensation to cases where it is needed rather than confusing that with introducing into compensation the question of deterrence.

There is therefore no evidence that the tort system works as the best deterrent available to the system. In fact, the true system is that it works as no deterrence to careless driving at all. Even the pro-fault Coulter Osborne report concluded that the beneficial impact of the tort system on the level and seriousness of accidents "is not empirically demonstrable." Indeed, there is no cogent evidence from any other country or system that the introduction of a no-fault scheme adversely affects the frequency or severity of accidents.

As the government appears to recognize, there are many other and more effective devices that are better suited to deterring accidents. There is ample empirical evidence to show that improvements in vehicle design, highway construction, tighter speed limits, improved seatbelts, higher minimum driving age and of course more concerted enforcement efforts will have a greater effect on accident reduction.

Also, tort litigation fails to ensure any correlation between the sanction, in the form of compensatory damages, and the negligent conduct of the careless driver. Presumably this correlation would be a necessary feature of any rational scheme of behavioural disincentives. While a massive judgement in tort law might follow a minor deviation from accepted standards of driving behaviour, there will be no sanction imposed for the most reckless piece of driving that harms no one.

An important point, I believe, associated with this is that if we are concerned about tort litigation and deterrence, the fact is that the existence of any insurance scheme whatsoever will ensure that negligent drivers will not bear the full weight of their behaviour. If we are truly interested in deterrence, the fact that even under a tort system we have insurance will spread the loss and ensure that each driver is not required to internalize the costs that result from her or his driving.

Also, the introduction of a no-fault scheme is not tantamount, as one commentator has put it, to "an amnesty program." The government, as far as I am aware, is not forbidding insurance companies from maintaining and enforcing a rating system. Bad drivers can still be obliged to pay higher premiums than good drivers. No-fault, as I understand it, speaks to the availability

of compensation for victims, not to the terms and conditions for contributions and financing of such a scheme.

The third criterion for judging a system, it seems to me, is its administrative efficiency. Are we getting, I suppose, the best dollar value? It seems to me a move to a no-fault scheme must improve the situation as it leaves one less bear around the honey pot, in this case lawyers.

Some stark figures are revealing and to me put the whole debate in the proper perspective. At present—these are drawn from figures of the Coulter Osborne commission—36 per cent of all insurance premiums are expended on administration, including operating, sales and adjustment expenses. Out of the remaining 64 per cent that goes to pay out claims, almost one quarter of that is spent on legal costs, meaning primarily the costs of lawyers. Of \$2 billion paid out by insurance companies for bodily injuries, \$500 million was paid to lawyers and a quarter of that amount was devoted to only 10 per cent of the claims made. In short, only 50 cents on every \$1 of insurance premium reaches the accident victim.

Although there will still be some marginal litigation under the proposed no-fault scheme, an issue that I will speak to briefly in a moment, the greater part of the money received by lawyers will be redirected to victims, or certainly should be redirected to victims, a move that is surely warranted by economic good sense and basic considerations of social justice.

On all counts therefore—deterrence, compensation and administrative efficiency—the proposed no-fault scheme is better than the existing fault-based system of litigation. More than that, the adoption of a no-fault scheme signals society's commitment to social justice. How we treat the victims of misfortune speaks to the kind of people we are and the community we aspire to be.

The government's decision to move away from the crass and costly cow of litigation, milked by its legal dairyhands, is a step in the right direction. It reflects the basic democratic commitment to treating the injured and the ill in the best way we can. To use some words from the poet John Donne, "Any man's death diminishes me, because I am evolved in mankind; and therefore never send to know for whom the bell tolls; it tolls for thee."

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I would not like to leave the impression that I am an unmitigated supporter of the government scheme. I believe there are many flaws in the

proposed scheme. First of all, the decision to compromise over the retention of any litigation at all is, I believe, a mistake. The existence of a threshold works to no one's benefit but the lawyer's. Second, I believe it is a mistake to leave the scheme in the hands of the private insurance industry and in this I agree—while I have been around to read it—with the words of Bob Rae, that this will benefit the private insurance companies. Nevertheless, I still believe this scheme should be supported because we should not allow the best to drive out the good.

Because this scheme is not a perfect scheme does not mean we should not necessarily adopt this scheme. It is a better scheme than what we have at present and represents a large first step in improving the situation for the victims of accidents. Also, I think it is unfortunate that in many ways we privilege the victims of automobile accidents over victims of other kinds of accidents, but that is still a step forward.

In short, the tort system is presently only sustained by what is a rather a sinister combination of naiveté, self-interest and a fear of alternatives. Fault-based liability began life in the 19th century when the horse and buggy was the favoured mode of transport. Whatever its merits then, law must change to respond to the needs of the times. The age of the automobile and its random victims deserves a more enlightened legal regime of compensation. Trial lawyers must certainly move out of the driving seat.

The Chair: Thank you. We will take five minutes; Mr Laughren, Mr Runciman and Mr Nixon, in that order.

Mr Kormos: If there is time—

The Chair: If you can talk to your cohort there, he will allow you some time.

Mr Kormos: No, Mr Laughren is going.

Mr Laughren: Professor Hutchinson, I enjoyed your presentation. I hope you will be able to leave a copy of your remarks with us or send one to the clerk.

I have been a long-time advocate of the New Zealand system of compensation, which includes road accidents, injured workers and any other kind of accident in the system. Do you see any problem—I am not talking about this bill in particular but perhaps this bill's being the trigger—in a jurisdiction such as Ontario, which is more industrialized than New Zealand and has a bigger population, moving to such a system?

Mr Hutchinson: I am sorry? Do I feel that this—

Mr Laughren: Do you see any problem with a jurisdiction such as Ontario, which is more industrialized than the country of New Zealand has a larger population, any fundamental or basic problem with a jurisdiction such as this moving to that kind of system, which is a comprehensive and universal system, government-run?

Mr Hutchinson: I assume the problems are merely political ones, a lack of will by the present government to countenance such a scheme. The New Zealand scheme seems to me a vast improvement. It includes all accidents of whatever source. It is also socially funded as opposed to privately funded. That system is in difficulty in many ways, but that I think is due to a lack of funding within the system, rather than to any inherent flaws in the nature of the system.

As to whether such a scheme is introduced in Ontario, I feel that is purely a question of party politics and not one that I would necessarily be able to speak on as a prediction. To my own mind I would like to see such a system. It would first of all, which might be attractive to all governments, rationalize our system of taking care of the victims of misfortune in our society and there are vast benefits to be made there, and it would also show that we had a genuine commitment to improving the lot of such people.

Mr Laughren: Is it simply an accident of history that injured workers operate under a pure no-fault system and other people who are injured do not?

Mr Hutchinson: An accident of history? I think it speaks in some sense to the ability of labour to act in more concerted ways than the random victims of accidents. I think a difficulty with the present debate around this bill has been that insurers have been well represented and financed in their presentations and that the victims of accidents have not always found a voice in which to speak. I think it was a little easier with workers' compensation. But in the future, once this scheme is established and improved, we might be able to move on to other schemes with regard to hospital victims and the like.

Mr Laughren: Just as final comment more than anything, Mr Chairman, I appreciate your comments on the efficiency of the present system in which 34 per cent of all premium dollars go to administration, I believe you said.

Mr Hutchinson: Thirty-six per cent.

Mr Laughren: I believe that under the workers' compensation system in Ontario, and nobody claims it is the most efficient possible,

but I believe that only around 10 per cent of its premiums go to administration costs. So the argument can be made that a no-fault system certainly is more efficient.

Mr Kormos: You are talking about social justice, and quite frankly, I think you are confusing proper social welfare systems with the responsibilities of an insurance company. What is just about letting an insurer off the hook to the extent that a person who suffers economic loss but may not meet the threshold cannot be compensated for that full economic loss? What is just about there being a \$450 ceiling on wage replacement or 80 per cent of wages, whichever is less, and not permitting that injured person, in many cases that innocent injured person, to seek recourse against what might be a very prosperous or wealthy, negligent, drunk, careless driver?

Are you not really confusing the need for adequate social welfare programs for all disabled persons with the responsibilities of the insurance company? The bottom line here is that the insurance industry is going to make profits that it has never before dared dream of and its investment in this government is finally paying off. How do you reconcile that?

Mr Hutchinson: I do not have any doubts that the insurance companies will do well out of this and I feel, as I have said, that that is a flaw in the system. But I think there are too many maybes. Maybe the person who suffers economic loss would do better under a tort system, but there is no evidence that he will do; there is no evidence that he has done in the past. I am concerned more with the victims in this case than with the insurance company. In the overall run of things, the victim is in a better situation in receiving both some compensation and speedy compensation under the proposed scheme than under the present scheme.

While the proposed scheme may be badly organized and in some sense underfunded in putting a ceiling where it does, it seems to me we have to separate the question of compensation and the question of who funds the system. If we wish to go after negligent drivers, then we should do so, but we should not tie that to the need of their causing injury or tie the compensation of injured persons to that attempt to go after negligent drivers.

Mr Runciman: I noticed in the article in the Globe and Mail yesterday that you are "teaching this year." That is the way it is phrased. Are you a visiting professor at the University of Toronto?

Mr Hutchinson: I am a visiting professor. I am a little unclear as to what the relevance of the question is.

Mr Runciman: Just be patient, sir. Are you visiting over the course of this year or visiting from where?

Mr Hutchinson: I am a professor of law of the Osgoode Hall law school. I am taking a sabbatical this year and I am a full visiting professor at the University of Toronto law school.

Mr Runciman: I would like to know what your background is. Where are you visiting from? Are you from another country, another jurisdiction?

Mr Hutchinson: I have been a professor at Osgoode Hall law school and taught there since 1978.

Mr Runciman: Since 1978, okay.

Mr Hutchinson: I have an accent. I was not born here. I am not very clear as to—

Mr Runciman: You can be jocular about it if you will. You are coming here and taking a very strong position and being somewhat critical of a Supreme Court justice, Mr Justice Coulter Osborne. The taxpayers of this province paid over \$1 million for what has been described as the most comprehensive study every done on the insurance industry, and you are sitting down here this morning without describing what your background is, what your interest is in this issue. I think it is relevant to this hearing that if you are offering what you are suggesting is, to us anyway, expert opinion, we should know where you stand in respect to Mr Justice Coulter Osborne. Why should we accept your views over those of the Supreme Court justice?

Mr J. B. Nixon: On a point of order, Mr Chairman: I do not think it behooves Mr Runciman to put words in the mouth of a witness who came here voluntarily. The man who is appearing never alleged to be an expert. If Mr Runciman wants to say that he is an expert, and that is what he said, I do not think that is fair.

The Chair: I am going to allow the witness, who looks to be over 21, to decide whether he wants to answer the question or not.

Mr Hutchinson: I wish I did not look over 21.

The Chair: It is the beard.

Mr Hutchinson: Sure.

I have no difficulty with, "Am I an expert?" I have taught law for 14 years, about eight of which have been in this country. I have written extensively in Canada, in England and the United States on the question of accident compensation. I have travelled to New Zealand, Australia,

England and the United States to look at accident compensation schemes.

I have read extensively the Coulter Osborne report and written on the Coulter Osborne report and studied its data. I used their figures to support my arguments in exactly the same way that Coulter Osborne supports his arguments.

I do have a particular view on the world; no doubt Coulter Osborne has a particular view on the world. I think our disagreements go more to our approach to social justice than anything else. My approach is to look to the benefit of victims. His approach seems to me to preserve the status quo and to primarily be affected by the strong lobbying of lawyers.

Mr Runciman: Have you practised law in the Ontario system? You have taught, but have you had actual in-the-field experience?

Mr Hutchinson: I do not practise, for a number of reasons: one, because I teach, and I believe it is important that one should be an academic as opposed to a lawyer; two, I am highly critical of the practices of lawyers within this province.

Mr Runciman: One quick question. The gentleman made a comment with respect to this being a positive step. He supports essentially what I will describe as a socialist position of government-run, pure no-fault, but sees this as a positive first step. I think I am quoting you correctly. I guess the Toronto Star and other supporters of government-run auto insurance would agree, and I guess I agree as well; I see this as a step in that direction. That is one of the concerns I have had, the establishing of regulation of rates, rate-setting authority, no-fault auto insurance, and the third step is quite possibly a movement towards government-run auto insurance. I simply want to say at least that is one element of your submission that I agreed with.

Mr J. B. Nixon: I am not sure if the witness is familiar with the report of Dr David Slater on the liability insurance system, which was issued in, I think, 1986 or 1987.

Mr Hutchinson: It was the one before Coulter Osborne. Yes.

Mr J. B. Nixon: It was described at that time as the most comprehensive review of the insurance system in Ontario and it recommended that Ontario move over time to a system of universal disability no-fault insurance.

Mr Hutchinson: I am aware of that, and it is very difficult to start balancing off one report against another. It just showed me that these reports are never quite as objective as they claim

to be, nor, I think, can they be fully objective anyway.

I think the Slater report is as good a report as the Coulter Osborne report. The need for Coulter Osborne after Slater was never particularly clear to me, other than for political considerations, and in that way I think it would be a healthy exercise to utilize many of the data that were developed in the Slater report.

Mr J. B. Nixon: Referring to some of those data, I recall in one of the studies under Dr David Slater, after examining the New Zealand no-fault disability scheme, he suggested that 80 to 90 per cent of the premium revenue was returned to victims of accidents, which was a vast improvement over the tort system in New Zealand, or here for that matter. Is that your recollection?

Mr Hutchinson: I would not want to say it is my recollection because I do not have a particular recollection, but what I do know is that in the leading study of the New Zealand scheme by my colleague Terry Ison, he suggested that no more than 15 per cent was retained to operate the system and that over 80 per cent of the funding went to the victims of accidents.

Mr J. B. Nixon: One final question, Mr Chairman. I think you will hear and others will hear allegations that no-fault is socialism in disguise or, perhaps worse, communism. Can you respond to that comment?

Mr Hutchinson: I do not see socialism as a term of abuse. I am quite happy to be a socialist and to describe myself as one, but not a communist.

Mr Runciman: You can tell by the beard.

The Chair: It is slowly becoming that way.

Mr Hutchinson: It is the hair, not the beard actually.

Mr Runciman: Oh, I see.

Mr Ferraro: I guess that leaves me out, eh?

Mr Hutchinson: Having said that, it seems to me, though, that it would be wrong to associate such a scheme with socialism alone. It seems to me if one thinks about OHIP, which I do not understand there is any suggestion that we will be moving away from in the near future, that is an important feature of any liberal democratic society. It is one that Ontario has and has been put in place and held in place by nonsocialist parties. I feel that automobile accident compensation is a similar kind of thing, and while it can be seen in a socialist light, it can also, I believe, be absorbed within the body of liberal democracy.

The Chair: Thank you for your presentation.
The committee stands adjourned until 1400.

The committee recessed at 1205.

AFTERNOON SITTING

The committee resumed at 1358 in room 151.

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I call on Mr Shatford, president of Guardian Insurance Co of Canada. You have half an hour. You can use that all up with presentation or you can do 10 minutes of presentation and allow 20 minutes for discussion and dialogue. The committee is entirely in your hands.

GUARDIAN INSURANCE CO OF CANADA

Mr Shatford: I have with me our vice-president for personal insurance, Brigid Murphy. I will take you through the presentation and then we will both be available for whatever questions your committee may have.

Our company has been insuring Canadians for about 100 years. It is our corporate goal to be a quality insurer and we believe that our quality comes from our service of fast and fair claims settlement. We are very proud that we have achieved our goal. We are considered one of the best insurance companies operating in Canada and we believe that we are good corporate citizens.

Guardian has 53,000 auto insurance policyholders in Ontario and during 1989 our claims staff handled 16,000 new auto insurance claims from those policies. We believe that Mr Justice Coulter Osborne's report was excellent as far as it went. Most of the recommendations we endorse, but the big issue that was not addressed by Mr Justice Osborne was the question of affordability. We feel that is the overriding concern that is before this group: the affordability question.

To run through that issue, I will go through some examples which point out the seriousness of the Ontario situation. In our own company operation, in the year of 1988 our average bodily injury claim cost in Ontario was over \$20,000 per claim. For the same coverage in Alberta, our average claim was just a little over \$10,000. We have nearly as many insureds in Alberta as we do in Ontario so the numbers are relatively credible.

In 1988 our average third-party liability premium per vehicle in Ontario was \$379—this is the compulsory aspect of the insurance package excluding the accident benefits—compared to Alberta, where our average premium in that period and for that same coverage was, as shown here, \$161.

In 1988 our net business loss, including investment income, in the Ontario personal

automobile insurance class of business was \$20 million—our bottom-line loss to our company.

A comparison summary of insurance premiums based on the current system compared to the proposed system is set out before you. In the first column, current average premium is, as it states, our current premium we are charging on an average basis in Ontario. All the figures here are averages. Toronto will be higher, rural will be lower, accident-free people will be lower, etc.

The second column is the actuarially projected premium we would require if the current system is continued. Built into this system is the acceptable profit level which was indicated by the Ontario rate board at a 12 per cent return on equity.

The next column is our estimate of the cost of the new system and building in this acceptable profit level of 12 per cent on equity. The final column is what we have submitted to the rate board, which falls into its guidelines of an eight per cent increase in Toronto and a zero per cent increase in the rest of the province.

Mr Kormos: The cat is out of the bag, Mr Chair.

Mr Shatford: The bottom line summarizes those premium levels that the current system, in our book of business, would require a 40 per cent increase. The proposed system would require a 17 per cent increase and we are being allowed 3.7 per cent.

If you sum up the compulsory aspects of those only—and those are the top three figures in each column—this shows that the compulsory section of the new plan would cost, on average, \$549 compared to the cost for the existing plan at \$706. That is a reduction of 22 per cent. The reduction, of course, is greater if you take into account that our premiums will be capped by the rate board's ruling.

The message that we receive from the public is that we must contain the cost of the insurance product. The item that I have just gone through demonstrates that the proposed plan is a reasonable compromise to contain costs. This will keep insurance costs reasonable for low-income drivers and affluent drivers will be free to purchase broader protection.

The total insurance claim cost in Ontario for automobile accidents was \$3.5 billion in 1988. This figure represents a serious drain on the financial resources of this province, not to

mention the human misery from death and injury which goes along with that figure.

We believe that a responsible government must work to reduce this cost and drain on our society. The insurance price question is only a symptom of the problem. Insurance costs are driven solely by the cost of claims. Much more effort is needed to reduce the number of accidents. The Ontario motorist protection plan includes some measures for increased law enforcement. This is not enough. Tougher driver testing and methods to remove bad drivers from the road should be instituted. This committee should bring forward much stronger recommendations in this area for the future.

The proposed plan removes a major amount of the adversarial claims settlement practice of the current system. In the new plan, we as insurers will be dealing directly with our own customers to settle most claims, as we do in most other areas of insurance. In personal property insurance we deal directly with our customers and our customers are satisfied with our service.

Claims will be settled much quicker than in the current system. More of the insurance dollar will be returned to the customer at a much earlier date. The fear and uncertainty accident victims must endure under the current system while they wait, sometimes for several years, for their claims to be settled is eliminated. The substantial no-fault benefits are available immediately, even for those individuals whose injuries meet the threshold.

Rehabilitation experts tell us that immediate treatment is vital to recovery. There is a significant disincentive for rehabilitation under the current system. We believe the rehabilitation provisions in the new plan will be a significant factor in reducing the social costs of car accidents in Ontario.

The proposed plan addresses the major concerns of the Ontario insurance buyer, in our opinion. Costs are contained in a plan which we believe is a good compromise between affordability and protection. Claims settlements emphasize service and protection. Availability of our product as a result of more adequate pricing will take away the current issue of people not being able to find insurance at a suitable price.

We caution this committee on the point that all increases in insurance benefits flow directly to increased insurance costs. This cost must be contained to an affordable level, and we suggest that any changes which result in the subsidization of high-income earners by lower-income earners should be avoided. The proposed plan includes

benefits which adequately protect the majority of Ontario drivers and we strongly support the approach whereby higher-income earners purchase additional protection.

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Mr J. B. Nixon: I would like to explore with you the proposition you put on page 3, where you say "any changes which result in subsidization of high-income earners by lower-income earners should be avoided." I agree with you and I just want to be clear. Are you suggesting that under the present system, by the spreading of risks and the insurance-pooling mechanism, high-income earners are subsidized by low-income earners?

Mr Shatford: The tort system system leads to the effect that those who lose more, I suppose, have more to sue for. If a Mercedes is wiped out by some poor individual with an old car, the Mercedes owner is getting the benefit of the insurance cost in that case. That cost is passed on to the driver of the older vehicle, who probably could not afford to be on the same road as a Mercedes.

That sort of thing flows right through the whole piece. A doctor earning a very high income could be incapacitated and this leads to a huge loss-of-future-income award or whatever for his family. Essentially, we are saying that in the new system that doctor could adequately go out and buy his own insurance and pay for his own extra benefits rather than expecting the entire society to contribute towards that.

Mr J. B. Nixon: Let me follow this through. A lot of people are trying to suggest that through this program the government is capping people's entitlement for lost wages at \$450 a week. I do not agree with that, but that is the allegation being made. My understanding is that this is a basic product that will be sold by all insurance companies.

Mr Shatford: Yes.

Mr J. B. Nixon: Will your company be offering additional protection for high-income earners?

Mr Shatford: Yes. Accident insurance for all forms of accidents has always been available in Canada and has been bought by many people.

Mr J. B. Nixon: That is the effective way of precluding a system that exists now whereby low-income workers subsidize high-income earners?

Mr Shatford: Yes.

Ms Oddie Munro: I would like to continue on the line of questioning of my colleague.

Could you indicate to me the kinds of inquiries for additional coverage you have already received from higher-income earners? I am trying to understand whether it is on the basis of profession, as you mentioned the medical profession. If that is the case, I am wondering how the construction worker, who may also during any given year have a high income, would be covered.

I do not know that restricting it to higher income makes sense. Could you give me a comparison, if this is the way you feel it should go, with insurance that is provided on home ownership, for example, where you have options, and which is not restricted by income? People can simply opt in to purchase additional coverage. I do not know if that is the right term.

Mr Shatford: The intention of this plan, of course, is that the option of buying higher weekly indemnity cover under the plan will be available there. But, as I say, at the present time accident insurance benefits are available for whatever limits people wish to buy up to their level of income. That has always been available as an income supplement to people outside of whatever plans they may get from employee plans or OHIP plans or whatever.

It just makes good sense that if someone has much more at risk, he should consider buying insurance to cover that exposure. As I say, this exists now. Accident insurance as such is not a large seller because of the fact that one of the biggest areas, automobile insurance, has not been a requirement of that.

Ms Oddie Munro: In your analysis of any statistics or projected statistics, is it fair to say that the option for increased coverage would also show a correlation with the number of jobs that were also being provided for in some way by those higher-income earners, or would they be simply self-supporting; ie, a construction worker who was working for someone else? In the professional end of things, I am looking at lawyers who would have a staff and would be projecting their income needs most likely on the number of people working for them.

Mr Shatford: There are group plans available. There is a loss-of-income-of-business insurance available. You can buy insurance for almost anything.

Ms Oddie Munro: I am wondering whether there is any direct relationship between the kinds of options you have under other forms of insurance protection and automobile insurance and whether the public is aware of that or whether you think that is a fair way to go.

Mr Shatford: As I say, I am sure this plan will lead to the sale of more incidental accident coverage. It has not been a big seller, but it is an available product that has been there for as long as I have been in the business.

Mrs LeBourdais: Thank you, Mr Shatford. For those individuals, and I am thinking particularly of self-employed individuals who would be making well in excess of the figure of \$30,000 and would potentially buy additional insurance, I am just wondering, are they going to inevitably see a very fast rise in the premium rates of disability insurance, so that whatever savings they ideally picked up in car insurance they are going to end up having to pay out in disability? Could you just comment on that?

Mr Shatford: The whole accident insurance range is a far broader coverage than if you are just looking at automobile accident only. If there is less contribution from automobile accidents, that certainly would affect the price of that insurance to some degree, but I do not think it will drive it up very high, because when you are looking at one individual buying accident insurance, it still is a fairly remote risk that he is going to be struck by lightning, so to speak.

Mr Kormos: Really, does it do us any good to talk about eight per cent increases, four per cent, 12 per cent, when in fact what we are talking about it is the need for the vast majority of people to have to buy insurance above and beyond the basic insurance that is being provided?

You have provided a chart and some suggestions as to what the premiums are going to be with your company, on average, with this new regime that the Liberals are trying to impose, but you have not told us what this extra insurance coverage is going to cost. What we are talking about is really big bucks for the person who not only has to pay the premium, which is high to begin with, but then that person is going to have to look for additional income coverage, what have you. Is that not in reality what is going to be happening? We are talking about facts and figures which have no relevance to what will be the real world if this legislation gets passed.

Mr Shatford: The cost of accident insurance is not that expensive. I have not got those prices with me, but I would be glad to give that to you. We are showing here in the \$200 range for the accident benefits under this coverage. That protects anybody in the vehicle. You could have situations where there are six people in a vehicle. So individual accident insurance on one wage earner will be lower than this if you are buying

that same kind of coverage for an individual wage earner.

Mr Kormos: And that is for starters. You talk about this little package. It is a maximum of \$450 a week, and only 80 per cent of one's income, up to a maximum of \$450. So what happens then is that when you have got a factory worker who makes \$35,000, perhaps \$40,000 a year, working in the right factory, he or she will not receive his full income replacement. Is that correct? Is that your understanding?

Mr Shatford: Not under this plan they would not. They would have to have other accident insurance or employee benefits insurance.

Mr Kormos: Yet I understand that there is no cap or ceiling on property damage. That is to say that the person driving the Jaguar or the Porsche or the Cadillac Allante, \$80,000, \$90,000, \$100,000 worth of car, is going to have his car replaced under a collision policy.

Mr Shatford: But that person who owns that car will have to pay a much higher premium for his insurance for that car, which in that price would not be spread over the low-income earners who are on the same road, as is the situation now. The low-income earner has to have insurance to pay for the Jaguars that are out there, whereas under the new system the cost will go up for the Jaguar owner and it will put more price on his risk, and that is a fairer distribution of the price.

Mr Kormos: I have got a feeling that it is only going to be the Jaguar owner who is going to be able to afford the premiums in any event.

Mr Furlong: Corvette owners.

1420

Mr Kormos: It is made in North America, thank goodness, by GM workers. My old pickup truck is doing just fine, thank you; it is similarly made in North America.

You are aware that the government had Kruger and his board look at choice no-fault, that is to say the option, and that was rejected. The government made a lot of noise about saying, "No, that isn't the way to go," because the government had to concede, the Liberals and their ilk had to concede, that that would create a two-tiered system: an insurance plan for the rich and a far less effective one for the poor. But are you not talking about a choice system where poor people are going to have one type of coverage and rich people are going to have another kind of coverage?

Mr Shatford: If they wish to purchase it. The coverage is certainly adequate for a high majority of the public, not just the lower-income people.

The choice system I think was rejected more for the fact that it was a confusing plan. It would be harder for the public to understand where the plan would affect them and it would be harder to communicate the overall situation. In effect, in the choice plan we predicted that most people would buy the no-fault anyway. Then you would get a situation where, after the accident, if they were only getting no-fault benefits, they would be unhappy that they were not sold the higher coverage. So that was a confusing issue as opposed to looking at it from two social aspects.

Ms Murphy: On the other side, I think the opposite is true in the new system. In fact, there is more equity in the system because the Chevette owner and the Jaguar owner pay the same property damage premium today. Under the new system, their premium will be commensurate with the value of their car.

Also, on our point on subsidization by low-income earners, I think the \$450 limit is a reasonable limit, because if you increase that to take care of people at higher income levels, you are having the lower-income earner subsidize those people. Our point is that those people should be allowed to purchase it and that would leave the cost at a more reasonable level for the people with the lower income.

Mr Kormos: Can I ask you this? What is fair about me as, let's say, a \$500-a-week income earner, being a totally innocent victim of what might be a very prosperous drunk driver, yet if I do not meet the threshold—and in the majority of cases I will not—notwithstanding that, I still may be precluded from working for any number of weeks? Even when I am the innocent victim of, let's say, a drunk driver, I cannot seek the shortfall, the difference between \$450 and my real income, from the drunk, the negligent driver, the careless driver who put me in the position in which I am placed.

Fairness rears its head here, and I think I will close with this. You take some pleasure in saying that in the new plan—and everybody is calling it new; the Liberals are marketing this as if it were some kind of new improved Tide, when it is less product in a smaller package and there is nothing improved about it—"We as insurers will be dealing directly with our own customers." Do you people not understand that the insurance industry has not done a damned thing in the last 20 years to generate any confidence among the public? The last thing in the world that people in Ontario want is to have to deal directly with their insurers. They have been screwed so often—

Mr Shatford: I strongly disagree with that. We have very many happy customers.

The Chair: Just on a point, Mr Kormos: I have been letting you go all morning. We may have children who are viewing the proceedings either now or when they are repeated. I would appreciate it if you would stick to using parliamentary language and reduce the swearing to as minimal as possible.

Mr Kormos: It was the "screwing" that upset you.

They have been gouged, pickpocketed, mugged by the insurance industry for so damned long now that there is no credibility factor any more. We have not been able to trust the insurance industry in setting fair rates. We have not been able to trust the insurance industry to date in distributing no-fault benefits fairly. How can we trust them under this new regime? They want to generate a regime where it is just them, the Goliaths, and the most defenceless of Davids. That is really the antithesis of fairness.

Mr Shatford: For the most part, the insurance industry has done an excellent job in providing our product to the public, but there is no such thing as a free lunch. Unfortunately, the costs have to be passed on to the customer. I do not care what system you put up; the cost is going to flow through to the customer.

Mr Kormos: Blame the victims.

The Chair: Miss Marland. Ms Marland. Mrs Marland. Margaret.

Mr Runciman: That is not parliamentary.

The Chair: Sorry.

Mrs Marland: I am glad you finally got it right, Harry. Happy new year.

The Chair: Happy new year.

Mrs Marland: Mr Shatford, I was interested to hear your response to Mr Kormos about the differential for protection for the Jaguar driver and the Chevette driver. I do not know why we picked those two makes, but that was in the previous context. In your answer you said that now the Jaguar driver, etc, was going to have to pay more to have the protection for the vehicle reinstatement.

I took from your response that that differential does not exist today. Yet I think that we know that people pay more today to insure a more valuable car. Your insurance rate today exists based on the value of what you are insuring. So is your answer that it is going to cost even more than it does today?

Mr Shatford: That fact about it being more for the Jaguar does not apply in the compulsory insurance aspect, the part of the insurance that the public must buy, which is your property damage coverage in line 2 there. The collision and comprehensive is currently paid by the owner of the vehicle based on the value of the vehicle and that is the first party section. That does not change. What changes is the PD section, and the PD premium there will in the future be lower for the lower-value vehicle. That was not true under the current system. The premium was the same for virtually all vehicles on that level, and that meant that the driver of the lower-income car was paying a higher premium than the risk he was bringing to the road.

Mrs Marland: Okay, so can you tell me then what category currently is the category that drives the higher premium for the more expensive car?

Mr Shatford: Currently it is your collision and your comprehensive section, and that will not change. That is what we call the first party cover, that is when the accident is your fault, or your car is stolen or damaged by hail, or whatever. That is the first party section, and that is currently purchased on the value of the car. The property damage section is the one that will change under the new system.

Mrs Marland: So what we are saying is that obviously the cost for repairing a more expensive car is greater because often the parts cost more; not necessarily, but they sometimes do. We are saying that when it gets to property damage, there is a difference between property damage and the collision and comprehensive. It is interesting to note when you make that comparison between the current and the new, the differential that exists today probably does not make any more sense than the differential that is going to exist under the new system.

Mr Shatford: The new system makes more sense, in my opinion.

Mr Runciman: This probably would have been a more appropriate question to Mr Lyndon this morning, but we did not have enough time earlier when he was a witness. We had the group before us this morning, our first group of witnesses, the Canadian Mental Health Association, and its request for an amendment which would expand, if you would, the involvement of its organization so that rather than the threshold being simply limited to consideration of physical injury, psychological injury and psychiatric

illness, etc., would be incorporated in the consideration for the passage of the threshold.

I posed the question to them in terms of the government apparently having some concerns about the cost implications of that. I assume the industry has as well. I just wondered, has anyone done any studies? What would the implications be if indeed that request were granted?

Mr Shatford: Injury in this area is very hard to quantify. That is, I suppose, why it is a difficult one to put in, because of the difficulty in quantifying it. But there is one aspect of the new plan which we think will ease this situation and that is the point we make about rehabilitation coming in much quicker—

1430

Mr Runciman: I do not want to hear that stuff; I have heard that over and over again from the government. I asked you a specific question. I do not want to be too harsh on this, but I can just open up the propaganda from the government on that one and read about that. Apparently you have not looked at the implications of this in terms of—your answer is really that it is difficult to quantify, so we really do not know what the implications are.

The Chair: Thank you, Mr Shatford, for your presentation.

Next we have Mr Johnson and Mr Cooper from the Motorcyclists' Coalition on Insurance. Gentlemen, you have half an hour to use as you see fit. If there is any time after your presentation for questions and discussion, we would be more than happy to engage in that as well. We are in your hands for the next half-hour.

MOTORCYCLISTS' COALITION ON INSURANCE

Mr Johnson: I will be referring to the document here, the yellow-and-black-covered one. We will try to speak briefly to it and then answer questions. I should point out that the coalition is composed of four organizations of citizens, consumers and volunteers which represent 72 motorcycling clubs or sections of provincial clubs in Ontario.

We have had a rather long involvement now with the question of reform of the insurance system, particularly motorcycle insurance. We are here to make a sincere effort to obtain a just, fair and reasonable insurance system. We think that, because of the good profits in motorcycle insurance in Ontario over the last few years, this should be easily attainable.

We had hearings and letters and we made presentations, to Osborne and to the various

hearings of the Ontario Automobile Insurance Board under Mr Kruger, who gave us a very good hearing last March. Nearly 300 motorcyclists attended to present a detailed classification system and economic appraisal of the system. Mr Kruger said it was a night to remember and his decision after that was quite favourable to motorcycles. But it has been a very long trip and what we have found is that government generally has agreed with many of the things we have said in regard to insurance. I hope this will continue.

The motorcycle insurance scene in Ontario is somewhat different from the automotive. In fact, if the automotive, the car insurance had as much margin of profit, of premiums over loss costs—and this is seen on page 13 in a graphical form in your reports—I think the insurance industry would be relatively happy and all these hearings might never have come to pass.

Figure 2 on page 13 shows the total premiums, over \$39 million—and these are Insurance Bureau of Canada statistics—and loss costs of just over \$29 million. This does not include, of course, investment potential but does include figures adjusted to their expected full development.

If we look in the longer term, our appendix at the back includes figures from 1975 to 1988 on basic third-party and accident benefits premiums, showing that motorcycle insurance has never been, in the long run, a loss to the industry.

Another factor is that Ministry of Transportation figures on this, which we can submit if you require, show that the motorcycle accident, injury and fatality rates have been declining in this province in the long term. This is probably because of the ageing of the Ontario motorcyclist. Motorcyclists today have more experience than in the past; the average age is up, so experience is up and fatalities are down. In fact, the 1988 figures for fatalities fell about 39 per cent. We do not have the full development of figures from this, because the new computer system in the Ministry of Transportation is not able to get the figures out yet.

Notwithstanding the improvement in the safety of motorcycles and the profitability, it is pretty hard to get motorcycle insurance. In fact, a survey done by the Canadian Vintage Motorcycle Group found that three firms—Jevco, also known as Motoplan, Co-operators and State Farm—wrote 70 per cent of the business to Vintage club members. A survey by the Ontario Road Rider's Association, a much larger sample, at a motorcycle show in 1989 found that Jevco had 33 per cent of the business, Co-operators 15 per cent and State Farm 14 per cent.

Before the Ontario Automobile Insurance Board, Jevco claimed to have 45 per cent of the individual policies in motorcycle insurance. Interestingly enough, the owner of this firm, which is nearly a sole ownership, indicated that unless he was permitted an increase in motorcycle insurance rates of 30 per cent before the board, he would restrict business. He was asked, and this is in the testimony we have included from the board, at the back of the report, if he received no increase whatsoever, whether he would cut out of Ontario completely. Jevco is based in Quebec, I should point out.

Of course, the insurance board hearings had indicated a 1989 increase of 7.5 per cent and a 1990 increase of 7.5 per cent. The government, of course, capped the rate for 1989 at 7.6 per cent.

Certain firms writing insurance on motorcycles in Ontario have what is often known as a black list, a list of motorcycles they will not touch; sometimes it is a white list, a list of machines that they will touch. All the rest are *persona non grata*. There are engine-size limitations, there are various limits on the nature of coverage available, there is use of the Facility Association for screening of new business. You are written first to the facility at higher rates. Then, a year later, you may get a rate with the actual company. These practices are not new. The insurance board's decision would have done away with blacklisting and some of these practices, but of course, it was put on the shelf.

Let me turn now to this specific Bill 68 in front of us and to page 4 of the backgrounder, under the no-fault principle, "Inclusion of Motorcycles." Justice Osborne, of course, pointed out in his excellent report that an enhanced benefit scheme could be brought in. He gave additional cost factors for that and brought in the principle of subrogation, now under Bill 68 called "loss transfer," which would enable the motorcyclist to have the advantage of these enhanced benefits without having to bear the entire premium.

The Motorcyclists' Coalition on Insurance, in putting material into the no-fault hearings last summer, pointed out that the price impact of this could be, on the then current basic premiums, an increase of 15.5 per cent. That was retaining the tort, as Osborne had indicated. But with the rate structure as proposed by the coalition, it would be only a 4.3 per cent increase, an average premium price to make these enhanced benefits available to motorcyclists. That was with subrogation or loss transfer.

That, of course, included the right of suit. With the right of suit reduced through threshold here, there presumably should be some further decrease in that level. We feel, and this has been discussed extensively by representatives of the coalition at several meetings, that because of some of the facts in Osborne's report, where about 36 per cent of the motorcycle third-party claims are actually not true third parties but are passengers of the motorcycle itself, indicating the inadequacy of the current no-fault benefits, these enhanced no-fault benefits are of significant advantage to the motorcyclists. About 40 per cent of motorcycle accidents, after all, are single-vehicle accidents where there is nobody to sue. So the coalition supports the principle of enhanced no-fault benefits packages proposed by the bill.

1440

The benefits package and inflation: One of the great problems with the current no-fault benefits is that it is obsolete due to its being set up back in the early 1970s and not really significantly enhanced since. We would like to see an amendment, perhaps it could be clause 6g(2)(a), something to the effect that the commissioner shall report annually to the minister as to the adequacy of the accident benefits package as it may be affected by cost of living, cost of treatment or rehabilitation. We think that would prevent the benefits package from being eroded.

There is a problem with the term "no-fault." We have used it, everybody uses it, but this is really not a no-fault or self-insurance system, although a lot of people out there whom our members are talking with—in fact many of our own members—think that, well, you are on your own. This, of course, is really not the situation.

Fault is still used for determining rates, structure of premiums, and a driver will have to pay. I think a lot of people do not understand that and we would ask the committee and the government to emphasize that fault is retained in aspects of this, that people still must be liable to one another for their actions on the road.

Section 2, page 6, the definition of "threshold," which is section 57 of the bill, section 231a of the act: The threshold proposed is basically that of the state of Michigan. Testimony before the board indicated that there has been a lot of litigation in Michigan in regard to this threshold, which is vague. Courts in Michigan have still found it vague and have trouble considering it.

The coalition has indicated that the benefits package can be added at little additional cost to

motorcyclists with the retention of the tort system. We think the tort system is necessary as, shall we say, a sword over the head of a number or a certain segment of motorists in this province. But if a threshold is required and it has been proposed by the government, then we think it should be more specifically designed and carefully worded. We would not like to see a lot of motorcyclists have to go before the courts and have determinations as to what the threshold means, so we would propose that clauses 231a(1)(a) and 231a(1)(b) be altered to what we have on the lower part of page 6, which is in effect the state of New York threshold.

It includes: death, dismemberment, disfigurement, a fracture, loss of use of a body organ, member, function or system for at least two years from the date of accident, consequential limitation in the use of a body organ or member for two years, significant limitation in the use of a body function or system, loss of a foetus and injuries which result in an inability to perform substantially all material acts which constitute that person's usual activities for at least 90 days during the 180 days following the accident.

Testimony before the board seems to support that this has been a practical threshold in the state of New York, and we think it would result in a lot less litigation here, and perhaps savings as well.

Section 3, classes of risk exposure, section 74 of the bill, sections 369 to 372 of the act: The insurance board, in March 1989 and in its decision of 17 May, although it was set aside by events in the automobile and the car side of things—we got a good classification plan. We had worked this through the Ministry of Financial Institutions, a classification plan and a system of rates that would provide for benefits to those who have taken safety training courses on motorcycles, which is a very important part of motorcycling safety. It would have provided proper penalties to those people who were poor drivers, poor riders.

It would have provided a good classification scheme, in a province where very few insurers have such a good, thorough, accurate rating scheme. Most of them have not bothered with a good rating scheme, and most of them do not write motorcycle insurance—let's face it.

We would like the committee and the government to consider strongly the motorcycle classification risk exposure system brought in with the decision of the insurance board on 17 May 1989, which is attached as an appendix here; that it be brought in as a model which can be used by the industry for rate structures for classification. We

think that is essential for good motorcycle insurance in this province.

Availability and choice of coverage, the complementary business issue, which is subclause 393(c)(x): "We have to have your house, your car and insurance on your first-born before we will give you motorcycle insurance." That has been a fact with a number of very respected firms for a very long time. But if that is made an unfair practice, will those firms simply say: "We're not going to write motorcycle insurance at all. We've got no complementary business, but we haven't got insurance"? This is the crisis.

We ask that since motorcycle insurance is mandatory in this province, the availability of coverage must be mandatory. I think it is only fair. You have to have it; you have to be able to get it—and not Facility Association rates, which are intended for bad drivers, bad riders.

At one time, in 1980, 22 per cent of motorcyclists in this province had to be insured through the Facility Association. Twenty-two per cent are not bad riders. It was just that there were not insurance companies that were willing to look at motorcyclists as first-class citizens. Their money was first-class, but they were not.

Insurance has to be written. It could be a considerable crisis. There is some suggestion that the major insurer in this province is backing out and will be gone. That is 45 per cent, and it could be a real crisis.

To go on, there are unfair rating practices, such as the blacklist. The board indicated the blacklist could not be used. It was an unfair rating tool under the board's determination. We ask that it be considered by the committee and the government that blacklisting is unfair. It has been dropped in the United States under pressure from motorcyclists and it should not be part of the system.

Limits of availability due to engine size and other factors: This is again a kind of selective tool that some firms use. "We don't insure big motorcycles," or "We only insure touring motorcycles." It could be applied in an unfair way and the person applying for insurance literally could not get a straight answer.

Limited availability of coverage: The largest insurer in the province does not write underinsured motorist coverage, SEF 44, family protection endorsement. A family man cannot get that extra protection from the underinsured motorist. It is as simple as that.

We ask that some of these business practices listed be considered unfair practices.

We feel there is a need for a public advisory committee. There are advisory committees on accident benefits and rehabilitation in section 6. We would like to see a citizens' advisory committee. This is very common in education and in the environment. It would be composed of car, light truck, motorcycle and some industry company people to sit on this. The government and the commissioner could run a few things by some of these people without some of the embarrassments that I am afraid the insurance board did suffer from because of a lack of good communication routes.

That concludes the presentation. If there are any questions, I will be happy to answer them.

1450

The Chair: Thank you, Mr Johnson. We have approximately 10 or 11 minutes, so three or three and a half minutes—

Mr Kormos: I want to thank you for coming. When I get back down to Welland, I am going to tell the people at the Welland County Motorcycle Club, who have been good friends of mine, the fine job that their representative did here this afternoon.

Knowing those people as well as I do—and I suspect that they are brother and sister organizations, being in the same position—my impression would be that the accident rate among people in the Welland County Motorcycle Club, and other similar organizations, is probably lower than among the total motorcycle-driving population in the province, because I know they are far more aware of the need for driver training and safety in the use of motorcycles.

We have experienced this phenomenon of these motorcycles that look like they are going 100 miles an hour even when they are stopped. There are no two ways about it. There are motorcycles out there that are real fast. What does your organization have to say about the really dismal failure of the government, the pathetic irresponsibility of the government in failing to ensure that young people have to be properly trained and have to undergo appropriate standards of testing before they can get on one of these motorcycles or, quite frankly, into a car, which can carry even more passengers?

It has been a matter of great concern. I should tell you that this morning Mr Bates from People to Reduce Impaired Driving Everywhere expressed great concern about the incredibly low standards that we have in this province when it comes to licensing people to drive. I know you and your organization have dealt with that internally, because you set high standards for

yourselves and, in most cases, you make yourselves available for the purpose of training to the communities that your groups are in. What would you say about the need for enhanced or improved driver training and standards for licensing?

Mr Johnson: This is certainly being addressed by the relatively recently established motorcycle riders' safety foundation, which is talking with the Ministry of Transportation in regard to these aspects. There has certainly been a lot of progress over the years in helping the Canada Safety Council courses at the community colleges get riders that essential first training and experience.

But let me point out that the chief factor in motorcycle accidents is exactly the same as in automobiles. It is drinking and then riding or driving. Certainly one of the big problems in motorcycle accidents and the reason why a Welland county member, Doug Bouse, was killed just a year ago, is because a drunk in a pickup truck hit and killed him.

You cannot predict what the drunk is going to do on the roads. If there is one thing that would solve the accident problem, it is to get the drunks off the road. That is a big part. Peer pressure among clubs has helped to do this. This is one of the reasons why we think some reflection of that sort of tort and control has to be there in some way or other to encourage people not to drink.

Mr Runciman: I would like to direct a question to the parliamentary assistant related to this submission, if he is prepared to respond, and that is the comments made about the threshold. The witness is talking about the proposed amendment they have incorporated in their written submission and that is essentially, as I understood it, the wording of the New York state threshold. Is that what you suggest?

Mr Johnson: It is slightly different because we felt the New York threshold was a little unclear as to the time before when people would be considered to have lost the use of an organ or limb. Usually, after about two years, if you are employed by somebody like the Ontario government, if you are unable to return to work, unable to function, then you go on long-term disability. That is one of the bases. We have made a slight modification there. We think, however, that it has to be more clearly defined. The courts are filled right now. In Brampton in Peel we are awaiting decision on a motorcycle fatality case and the backlog is 600 days.

Mr Runciman: I think what is more relevant is the Michigan situation and I would like to hear the government's reaction to this proposal.

Mr Ferraro: The question was whether or not we adopt a New York threshold as opposed to—

Mr Runciman: How do you react generally to this threshold?

Mr Ferraro: We obviously looked at all the thresholds and the different insurance plans available. The direct response to Mr Runciman is that it was the determination of the ministry, and specifically from the results of the Ontario Automobile Insurance Board hearing, that the New York threshold, if applied here in Ontario, would not result in any significant cost savings. In conclusion, having looked at the various alternatives and the various types of thresholds, the determination was made by the government that this made-in-Ontario proposal would provide the best cost savings and balance at the same time, mindful of the fact that not all would agree.

If I might, without taking away from Mr Runciman's time, and I hope I am not changing the subject entirely, the comments about the blacklisting are something the government is very sensitive to and the committee might want to pay specific attention to that. There may be consideration of regulating against that.

Mr Runciman: The parliamentary assistant is saying that this threshold simply opens too many doors and their intent was a made-in-Ontario policy that would be the most restrictive threshold in North America, and I guess that is what they have accomplished.

Mr J. B. Nixon: Gentlemen, I want to thank you for your presentation. I am always impressed when people and organizations come forward and present a thoughtful brief. It indicates you spent a lot of time thinking about and working on this issue, and obviously appearing at the hearings. I am like my friend the member for Welland-Thorold (Mr Kormos): I have a brother-in-law who is a member of one of your affiliates and I will go back and let him know of what a good job you are doing on his behalf and others.

I want to ask you a specific question about the no-fault principle. You are suggesting, I take it, that with the expanded right to no-fault benefits and the compulsory attachment of those no-fault benefits to any insurance product you buy, there are a lot of motorcyclists who will now have compensation for injuries, if they are involved in an accident, who might not otherwise have any compensation, because under the tort system they have to sue someone. Under this no-fault proposal, if 30 per cent of them cannot find anyone to sue, under the old system they would not have anything.

Mr Johnson: Under the old system there were the minimal accident benefits or else you had coverage through your employer or private plans. It is interesting to see the level of suits in the United States where medical insurance plans, OHIP and suchlike are not common. There is a lot more in the way of attempted suits by motorcyclists of the helmet company, the motorcycle manufacturer or anybody because there is no other party to sue or no other vehicle to sue.

I think that is a valid assumption, that it will provide for younger people in particular who are not perhaps into plans or benefits with employers or who have their own plans.

Mr J. B. Nixon: So in that sense you would call this major element of this legislation a great improvement for motorcyclists, I would think.

Mr Johnson: We asked for it in the board hearings last summer and supported that. We do feel that our calculations show it could be added with a retention of tort, as Osborne showed, for very little and that the clearer threshold—I think the attitude of Mr Ferraro that it was not going to save any money—you are not going to save any money and the insurance premiums are not going to go down. I think motorcyclists would be happy if the board's figure of 7.5 per cent for 1990 were all they saw in June of this year and they were able to get insurance.

1500

Mr J. B. Nixon: It is my impression, and correct me if I am wrong, that a number of motorcyclists who are injured in accidents sustain head injuries. Is that your experience?

Mr Johnson: The kind of injuries does not appear in the work done by the Osborne commission. In fact, there seem to be less in the way of head injuries than in light trucks, probably because light trucks do not have safety belts. You see head injuries with a federal member of Parliament who did not have his helmet done up when he ran off the road down in New Brunswick in the summer, or with children who ride minibikes and do not bother to put their helmets on or in extremely severe cases where the helmet transmits the injury through to the rest of the system and the impact is far too high for survival.

The Chair: Thank you, Mr Johnson, for your presentation.

Could the representatives from Progressive Casualty introduce themselves. You have half an hour of time in which to make your presentation. If you so desire, leave some time for some questions and discussion. Whoever is going to be

making the presentation, we are in your hands for the next half-hour.

PROGRESSIVE CASUALTY INSURANCE CO

Mr Rogacki: My name is Andrew Rogacki. I am the general manager of Progressive's Canadian operation. With me is Victor Politzi, who is our Canadian regional claims manager, whose responsibility includes northern New York. He lives and breathes no-fault in New York every day, which could be interesting for you for the question period.

Although some of you may know a little bit about Progressive—I recognize some familiar faces—most people will not have heard of us, so let me give you a very brief summary. In Canada we operate as a branch of a United States insurer that has writings of about US\$1.3 billion and total assets in excess of \$2 billion. We are the third-largest private passenger auto insurer in the United States, rated A-plus by A. M. Best and consistently one of the most profitable property and casualty companies in North America.

Progressive is a specialty insurer with the vast majority of its business derived from writing vehicular indemnity. The company has three business groups. The first serves personal lines customers, such as high-risk auto, motorcycle, motor home and local commercial vehicle, through brokers. The second business group deals with fleets of trucks and buses on a direct basis, while the third group serves financial institutions with highly specialized needs, such as directors' and officers' liability insurance, collateral protection, credit card insurance.

Progressive is a highly specialized niche marketer. We do not write standard auto or any other commodity-type lines. We have been operating in Canada since 1982 and for the first five years had a very small foothold in the market. In 1987 we began a planned expansion and have grown from about \$6 million in 1986 to about \$25 million this year.

Now let me tell you why we are here. We believe there are two big challenges facing the government with respect to auto insurance. First is the finalizing and implementing of the new legislation and second is depopulating the Facility Association; that is, the market of last resort. There has been a lot of coverage on the subject in the newspapers, television, etc., and we would like to present to you the view of a specialty writer. We would also like to share with you what we see as the pros of the new legislation

as well as to assist the government and point out some potential issues.

Please note that we really do not have an axe to grind, as we can operate under any legislative system, provided that it is economically viable and that the system distinguishes between good and bad drivers by charging an appropriately higher price for bad driving records.

Please let me contrast Bill 68 with recent developments in the US, and most notably California. We believe Ontario has done a much better job than US jurisdictions in dealing with the very real political, social and economic consequences of rapidly increasing auto insurance rates. This is even despite the deferral in implementation of a uniform classification plan. Given that the public wants an insurance product that is lower in cost than a pure tort system in an environment with relatively stable rates, we believe the approach taken by Ontario legislators is logical and well considered.

Pure tort with increased level of first-party benefits would be a great system but would need immediate 40 per cent or more rate increases. The problem is not the tort system itself but the rapid increase in compensation cost, expectation of compensation by insureds and litigiousness. Also, some insureds have learned to play the game and abuse the system. They do not mind taking advantage of insurers as, "It's okay; the company has deep pockets." As expectations of compensation for damages increase, the pure tort system mirrors such expectations and reflects them in price increases based upon the increased cost to indemnity suppliers.

The key is to create a system that balances expectations for compensation with fair payment for the loss suffered and premium paid. At the same time the system must be able to reduce or to prevent abuse or unrealistic expectations. We believe that the verbal threshold no-fault is an excellent choice for achieving these goals.

We believe the government should take a firm stand and should not dilute the threshold from today's proposal. We hope that the government does not yield to pressure from various interest groups. If it were to yield, we believe we would be facing an unmitigated disaster as every degree that the threshold is weakened will increase the cost and hence the price. If the government or the courts that interpret the threshold were to be wishy-washy, expectations would increase, as would uncertainty.

To be sure, critics will have horror stories to tell. The papers are full of examples of how the proposed verbal thresholds would insufficiently

compensate one kind of victim or another. By definition, any threshold can have a victim that is truly injured but falls just below it. Also, please do not forget that today's existing system has its own horror stories. Although there is no perfect system, we believe the government's proposal is as good or superior to any other put forth anywhere and has the least inequity possible for the most people. Those injured would be compensated quickly for their basic needs without having to endure the delays and anxiety of a tort process.

A matter relevant to timing: whatever the final choice, please let's get on with it. We believe the Ontario market cannot stand any more waiting. It is better to have slightly imperfect product reform now and to improve it over time than to continue today's auto insurance environment.

I said I wanted to draw some comparisons to California and this would be an opportune time. Some of the news media advocate publicly provided insurance and I would just like to quote an excerpt from the 11 December 1989 National Underwriter which talks about the California situation. In it, commissioner Roxani Gillespie of California was speaking about an initiative by proposition 103 author, Mr Rosenfield, to set up a state-run auto insurance system in California, and I quote: "I find it ironic that at a time in history when even Bulgaria is discovering that government-run industries do not work, Harvey Rosenfield wants to establish government-run insurance in California." Commissioner Gillespie went on to say that the solution to insurance problems lies in "a well-run, well-regulated, competitive private insurance industry."

In summary, the US regulatory situation is in turmoil with California, New Jersey and Massachusetts, among others, having problems. Ontario has been following a rational process and has a chance to become a model.

Now let me talk a little bit about what we see as the pros of the proposed system as well as some things we believe could be better. To start with the pros, here is why we like the system. The proposed system is reasonable with good access to courts for those seriously injured. Similar systems work well in New York and Michigan. The system offers quick payouts of enriched benefits. It provides for a strong regulatory environment, and from a consumer perspective rights are easily understandable and well defined. Last, it affords reasonable costs as well as a strong likelihood of increased stability of premiums.

Now, to assist the government, here are a few issues. First, the proposed legislation will correctly allow subrogation or loss recovery of first-party benefits above \$2,000 between motorcycles, autos and heavy commercial vehicles. However, it would appear that physical damage would not be subrogated between classes and neither will be first-party benefits for buses.

In general, heavy vehicles inflict considerable damage while suffering relatively little damage themselves. The heavy vehicles operate around the clock and have a high frequency, inflicting losses disproportionate to their number of units. Thus, we believe that both for physical damage and accident benefits, in the case of buses, loss recovery should be allowed. Otherwise, private passenger autos and motorcycles will subsidize heavy vehicles.

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Further, an insurer cannot subrogate for accident benefits against a third party—for example, a municipality, a manufacturer of vehicles or a tavern—so why should auto insurance subsidize such parties who are not contributing to the no-fault system?

Second, we believe a vital element is missing from a no-fault benefits schedule; that is, an insurer must be able to stop benefit payments if the insured, after reasonable time, refuses to undergo any rehabilitation or retraining. Claimants should be required to mitigate damages.

Third, from preliminary discussions with reinsurers, we are led to believe that for small and specialized companies such as Progressive, reinsurance coverage may become expensive and difficult to obtain. We recommend the implementation of a catastrophic loss fund, as in Michigan, which could easily be administered through the Facility Association and whose effect would be to level the playing field for all insurers.

Fourth, the eight per cent urban and zero per cent rural rule appears to have been conceived without taking into account the goods and services tax. We submit that the government consider an across-the-board increase for auto insurers to compensate for the GST when the GST legislation is closer to being finalized. Please note that the effect of the GST should be included in the 1 June pricing, as the policy period extends to 1 June 1992.

Further, we hope the government considers interim price relief, given the delay in the effective date of the legislation from 1 March to 1 June 1990.

We are very concerned about the poor financial results of the Facility Association which imply that even with product reform large rate increases are needed. We are worried that if the Facility Association receives no more than the mandated eight per cent and zero per cent, the residual markets will be squeezed by pricing ceilings and rapidly rising costs and Facility assessments.

At the very least, we hope the new commissioner considers tiered increases for Facility whereby clean, unsurcharged private passenger auto risks with driving records 4 or 5 are assessed only the zero and eight per cent adjustment and the rest of the book is assessed higher increases.

With regard to the fault determination chart, we believe some discretion should be left to claims adjusters. Such discretion should allow for weather conditions, driving behaviour such as speeding, whether the driver had his lights on at night, etc. This discretion should probably be limited to, for example, a given per cent, such as 20 per cent of the fault value assigned in the chart. Alternatively, a slightly more complex chart that takes into effect some of these elements should be considered.

Although there is nothing to prevent an insurer from filing the use of innovative rating variables, it is clear that the government considers some of these variables socially repugnant, such as occupation, income level, etc. There are two relevant points here.

First, given the vastly increased level of first-party benefits, new rating variables are needed to more accurately price for severity of accident benefit losses. Since the accident benefits part of the auto policy is in effect a medical and disability coverage, auto insurers should be allowed to use the same rating variables as accidental death and dismemberment carriers.

Second, companies that have a life insurance affiliation already possess many of the income, occupation, etc, data in their files. Thus, they have an extremely significant advantage, even if they cannot use such data for rating but simply use it for underwriting purposes or as a marketing tool.

With respect to the depopulation of the Facility, it is obvious that the market is extremely tight and that agents or brokers do not have many companies open for business, so here are a few suggestions that may help to alleviate the problem.

First, the Florida State Legislature recently enacted the following with respect to the state's

Joint Underwriting Association, which is the equivalent of our Facility:

"Each application for coverage in the plan shall include, in boldface 12-point type immediately preceding the applicant's signature, the following statement: 'This insurance is being afforded through the Florida Joint Underwriting Association and not through the private market. Please be advised that coverage with a private insurer may be available from another agent at a lower cost.'"

We believe that a similar statement should be printed on Facility applications and that each Facility policy issued should be accompanied by a flyer in the same envelope with such a statement printed.

Second, and more locally, subsection 346(12) of the Insurance Act seems to indicate that no agent can represent more than one insurer with respect to property and casualty insurance. Thus, Progressive or any other nonstandard writer has no access to any of the business that flows from direct writers to the Facility Association. Please note that direct writers account for a substantial percentage of the business going to Facility.

We suggest that Bill 68 provides the ideal means to amend the law so that an agent be allowed to represent more than one insurer provided that the direct writer has consented to this. Please note that any direct writer that did not wish to allow its agents to have access to any other markets would simply decline getting involved. We believe the above change would contribute to the depopulation of the Facility by allowing Progressive or any other specialty insurer to try casting its net over a broader range of potential claims, offering lower prices and better service to qualified insureds.

Last, please note that where a life agent cannot find the appropriate product for the client within his own company today, he has the ability to try to place it elsewhere. We are only asking for the same rights for the property and casualty agents.

Third, allow any company that wishes to be a carrier for the Facility to do so; in other words, eliminate barriers to entry. This would have two effects. It would improve service, but this improvement would take place if, and only if, insurers could actually solicit brokers to use them as carriers rather than just be assigned brokers, as today. In other words, carriers would be open to market pressures, which would force them to keep service levels high.

The second effect would be that more companies would get to see details of risks going to the Facility and it is likely that some of the better

ones would remain in the voluntary programs. In particular, if a nonstandard insurer were to be a carrier and be able to solicit business from brokers, the end result would probably be that some part of the Facility business would begin to flow through the nonstandard carriers which would either retain it on their books, or as a last resort, place it in Facility.

However, despite the above, the best way to minimize the size of the involuntary market is to allow adequate pricing to the standard markets, which would bring supply back to the equation.

Last, we believe that in the short term healthy residual markets are absolutely essential to help ease the transition from the old to the new legislative environment. In the longer term, vibrant residual markets help smooth the underwriting cycle and minimize the population of the Facility. Our goal at Progressive is to become the market of choice for all specialty and difficult-to-place risks.

In conclusion, we would like to reiterate our support of the government's proposal and urge you to recommend its adoption without material changes, as well as to give serious consideration to the technical issues presented.

Thank you and both Victor and I will be glad to answer any questions.

The Chair: I have Mr Laughren, Mr Kormos and Mr Runciman. Mr Laughren, between you and Mr Kormos, there are four minutes.

Mr Laughren: I will be very specific and very direct. What do you think the insurance industry did wrong that provoked the massive government intervention we have seen in the last couple of years in Ontario?

Mr Rogacki: What it did wrong?

Mr Laughren: All industries are not intervened with in the way the insurance industry is.

Mr Rogacki: It probably competed too much on price for too long with the result being that when the necessary price increases caught up, people were shocked to see them. For years and years, basically consumers got a phenomenal deal in insurance because everybody was doing—I should not say everybody—some people were doing what was subsequently referred to as cash flow underwriting. When interest rates started going down and when the price of insurance started to go up, people started to get sticker shock. So is it wrong? It was just ultracompetitive.

Mr Laughren: I do not know. You are going to have to convince the Bulgarians, I think.

The Chair: Mr Kormos, two minutes.

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Mr Kormos: I am fascinated by the—talk about imported. You see, the government has been on tenterhooks saying: "We did not import this scheme. It is not the Michigan model. We're not Americans even though we look like them and we sound like them and we talk like them and we walk like them and we want to skewer the driving public in Ontario the way it has been skewered in most of the United States." But heck, it remains that here in Canada—I am sorry to tell you guys this—as far back as 1946 public automobile insurance started in Saskatchewan, alive and well and providing insurance more efficiently, more fairly and more affordably.

Oh, it has had increases, because claims costs have increased in Saskatchewan, Manitoba and British Columbia, just as in Ontario, but the fact is that in Manitoba, Saskatchewan and British Columbia there are no profits and that saves drivers millions of dollars a year. They are simply run more efficiently. Their adjusting costs are around 50 per cent of what they are in Ontario and their overhead or administrative costs are approximately 50 per cent of what they are here in Ontario.

The fact is that these were introduced by Co-operative Commonwealth Federation and New Democratic Party types of government, but they have been maintained and sustained by subsequent governments that include, at least for us Canadians, what constitute right-wing governments, such as the Socreds. Guys like Vander Zalm continue to maintain what are very successful public nonprofit driver-owned systems that deliver insurance fairly and affordably, far cheaper than Ontario ever has, far cheaper than Ontario ever will. These jurisdictions, I tell you, gentlemen, deliver strong no-fault components and they have also maintained the right for people to be compensated for pain and suffering and loss of enjoyment of life.

You talk about Bulgarian oppressiveness. What is more oppressive than telling injured people that they cannot have recourse to the courts to be fairly compensated? You want to point the finger at Bulgaria. People are going to start pointing the finger at the sort of jackboot policies of the Ontario government when it starts denying rights the way it plans to do with Bill 68. There are successful alternatives, gentlemen.

The Chair: I will treat that as a statement; Mr Runciman.

Mr Kormos: Let them answer if they want to.

The Chair: There was not a question there, Mr Kormos.

Mr Kormos: There was an implied question.

Mr Runciman: I gather your company is a public company.

Mr Rogacki: Yes, we are publicly traded.

Mr Runciman: How has the Canadian branch done in the past couple of years? Have you had profits?

Mr Rogacki: Yes, we have made money.

Mr Runciman: Can you tell us what those amounts might be? Since you are a public company, it should be public information.

Mr Rogacki: Certainly. Would you want to know in terms of amounts in absolute dollars or in terms of return on—

Mr Runciman: Absolute dollars.

Mr Rogacki: In absolute dollars, I think we made, pretax, about \$2 million last year if I remember correctly, and this year it is about \$1 million pretax. That is roughly what it will come out to be. That is after investment income.

Mr Runciman: Have you done any projections on this government proposal? You are so laudatory in your presentation here that I assume you must have looked at the bottom-line benefits to your firm. Have you done any projections that you can share with us today?

Mr Rogacki: I do not think the change in legislation itself will improve our bottom line. Ideally, for an insurer of high-risk and specialty vehicles the best possible system would be a pure tort system, simply because you assign the full loss cost to the tortfeasor, if you will, and therefor increase his premiums to as much as they will go. To the extent that an insurance company is able to select the better from the worst tortfeasors, you end up with a profitable book. If anything, as a system this is less than ideal for us but we think we can exist within it.

Mr Runciman: So with the \$1-million profit this year—that is what it looks like and that is including investment income—you are suggesting to us today that with this new system in place, in a year or two from now if we are reviewing this, we are going to be hearing from you that in terms of if we had to look at the same situation, policies and so on, we are not going to see much change in your bottom line.

Mr Rogacki: We hope not.

Mr Runciman: Have I got time for one more, Mr Chairman?

The Chair: Yes, two more minutes.

Mr Runciman: I am just curious about the whole element Mr Laughren raised, about why we are in the situation we are in today. I do not know if there is an average way. I guess we can deal with this in percentages, if it is possible. In terms of your own business, how long have you been operating in Ontario?

Mr Rogacki: As a company we have been here since 1982.

Mr Runciman: Over the period of time you have been operating in this jurisdiction, how much have your rates increased, on average? Do you have that kind of figure at your fingertips?

Mr Rogacki: I am sorry; since 1982, no. The program has really changed. I really could not even begin to estimate that.

Mr Runciman: Would you think it exceeded the rate of inflation over that period of time?

Mr Rogacki: If you define "inflation" as "trend," in loss cost I will venture probably not; but again if you define "inflation" as "trend," as increase in loss cost rather than just CPI, which is meaningless to insurance.

Mr Runciman: Even if it meaningless to you, it is not meaningless to the public. How would you rate it in relation to that figure?

Mr Rogacki: In truth, I cannot give you a good answer—that is not for not wanting to—but I can give you a bit of personal background, which is that I joined the company in mid-1987 and since then the rates, as we all know, have been pretty well capped and the increases mandated. I really cannot go back farther than that and give you a good answer.

Mr J. B. Nixon: Mr Chairman, with your indulgence, I just want to make a quick comment and then ask a question. What I find amazing, as we go around this table and hear the questions asked, is the attribution that people make to various programs as being of a partisan nature and so on and so forth. Mr Kormos is right, absolutely, that public plans exist under Progressive Conservative governments and the Progressive Conservative government of Manitoba, which operates a public plan, wants to bring in pure no-fault.

When these people get all excited and start telling me that it is a Liberal, a PC or a New Democratic philosophy, I have to say that I am not sure I agree with them. I will tell you that Mr Runciman's party, next door to us, wants pure no-fault and Mr Kormos's party out there has juggled the books so badly that a cabinet minister had to resign, the auditor was fired and they lost

an election. So I cannot stand listening to this unmitigated diatribe.

The Chair: There may be a question in there.

Mr J. B. Nixon: No, that is my comment; now my question.

The Chair: You have two minutes.

Mr Runciman: What about the Premier of Newfoundland and Meech Lake?

Mr Kormos: Get the manure shovel.

Mr J. B. Nixon: At least we got them excited over there.

The Chair: Two minutes.

Mr J. B. Nixon: My question relates to the Facility Association.

Mr Kormos: Why does he never come up with facts to back these up?

The Chair: Order, Mr Kormos.

Interjections.

Mr Kormos: What about Woods Gordon? Read it.

The Chair: Order. I am telling you to shut up.

Mr Kormos: You want to muzzle every bit of—

The Chair: Not during his presentation.

Mr J. B. Nixon: My question has to do with the Facility Association. On page 10 you recommend a system of tiered increases. Can you elaborate on that for me. My impression is that there are a lot of people getting dumped into the Facility Association who may not belong there and there might be a better way of pricing in the Facility Association. Can you elaborate on that.

Mr Rogacki: Yes, I was simply suggesting that the people who for whatever reason are being dumped into the Facility Association, who have either driving record 4 or 5, in other words, who have a reasonably clean driving record, or in the case of a 5 who have a very clean driving record, are afforded only a zero and eight per cent increase. However, for people who have worse driving records, who have accidents, convictions or what have you, I am suggesting that a larger increase be allowed to them, because if you look at the Facility results overall it is clear that even with product reform the Facility needs much more than zero and eight per cent. I am suggesting that the "much more" come from the area that causes the cost of the much more to increase.

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The Chair: Thank you for your presentation.

Representatives from the Hamilton Automobile Club: Mrs Newell, are you making the presentation?

Mrs Newell: Yes I am, Mr Chairman.

The Chair: You have half an hour of our time and you can either take it for the full presentation or leave some time for questions and discussion and comments from the colleagues, and the time is equally divided. We are in your hands for the next half hour.

HAMILTON AUTOMOBILE CLUB INC

Mrs Newell: As the paper is very long, I am going to try and leave out paragraphs here and there, just in the interests of time. I would like to introduce the colleagues with me today. Leo Laviolette is our vice-president of government and public affairs, and Dennis O'Sullivan is the manager of the technical services at the club.

The Hamilton Automobile Club is Canada's oldest automobile club. At the time of its foundation there were but a handful of motorists who became members in the Hamilton area. However, its membership has grown from its humble beginnings of 19 members to that of over 212,000 members today.

The Hamilton Automobile Club is a nonprofit organization which, among other things, was founded in 1903 to further and protect the interests of motorists. The club serves motorists in Hamilton-Wentworth, Halton, Brant county and Haldimand. Our membership represents a market penetration rate of 50 per cent, which means that over 50 per cent of all motorists in the area served by the club are members. This 50 per cent penetration rate was just achieved this past December.

The Hamilton Automobile Club is affiliated with the Canadian Automobile Association, whose membership in total is over three million, and with the American Automobile Association, which has in excess of 30 million members.

The club has many CAA affiliates in Ontario that provide direct services to their members. The CAA Ontario clubs have a total membership in excess of 1.3 million. The CAA Insurance Co (Ontario), which is a subsidiary company of the CAA Toronto club, sells automobile insurance through the offices of several CAA-affiliated clubs in Ontario. The Hamilton Automobile Club does not now sell, nor has it ever sold, automobile insurance. As we are not connected with the insurance industry in any way and thus have no conflicting interests, we view our mandate, established in 1903, to represent, protect and speak out on behalf of the interests of the motorists as one of our most important roles.

One of our specific objects, namely, "To engage in all activities permitted by law intended

to further and protect the interests of the users of motor vehicles and the travelling public," brings us here today to make our submissions about a reparation system that we feel best suits the needs of Ontario consumers.

To those who might indicate that there is not an insurance crisis in Ontario at this time, we say that from our vantage point we cannot agree. We have been on the receiving end of numerous complaints from members and the public on the spiralling cost of insurance. More particularly, those on fixed incomes, especially pensioners, are horrified about the total percentage amount they are paying out of their fixed budget for insurance premiums. Their pensions, even if tied to the CPI, cannot keep pace with the cost of insurance premiums as it consumes more of the total dollars available to them as disposable income.

Newly licensed drivers' premiums are currently reflective of marital status, sex and age, so that in combination their rates have become astronomical. This is unfortunate, because this group of drivers generally does not have the type of income necessary to support high levels of premiums, and certainly not the potential level of premiums if the current system remained in effect. Regardless of problems faced by particular groups, we feel it is fair to say that from our experience in dealing at first hand with our membership, the public views insurance rates as being too high and that serious affordability problems have arisen for many.

We strongly support the establishment of the Ontario Insurance Commission, whose authority will be to administer the Insurance Act, to supervise generally and to make recommendations to the minister regarding the business of insurance in Ontario.

Section 6h allows the Lieutenant Governor in Council to assess all insurers with respect to expenses incurred and the expenditures made by the commission in the conduct of its affairs. One major concern we have with this provision is that, if exercised, ultimately the insurance consumer is going to be affected, as this expense will be passed along in the form of increased insurance premiums. We would hope that this cost of doing business would in fact not be passed along to insurance consumers.

We would highly support the assessment against the insurance industry if we are guaranteed that such assessment would not be passed along to consumers in the form of increased premiums. In the alternative, we suggest that the cost of the commission be absorbed by the

government in its role of protecting the public interest.

In subsection 6j(4), the commissioner may establish a scale under which costs shall be assessed with respect to a proceeding before the commissioner. We would suggest that costs be kept reasonable so that consumers can afford to commence proceedings under the act. It would be our hope that these proceedings would dispense with the necessity of costly litigation in most instances.

The inclusion of a provision for reference hearings is an excellent idea. It is incumbent upon all of us who are concerned with the public interest that we raise problems that have arisen with the Lieutenant Governor in Council so that a public hearing might be required to be held on such insurance-related questions.

Section 11 is an important provision which allows the superintendent or person designated by the commissioner to direct any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and which further specifies that the insurer must answer promptly, explicitly and completely. As we see later in section 412, if an insurer furnishes incomplete information, he is guilty of an offence and liable on a first conviction to a fine of not more than \$100,000.

Section 12 gives the superintendent or person designated by the commissioner effective authority to examine the books, securities, documents and things related to the business of an insurer, agent, adjuster or broker. We strongly support the inclusion of these powers in the amending Bill 68.

The superintendent's power to examine insurers' statements, make such inquiries as are necessary to ascertain insurers' conditions and ability to meet their obligations and make such necessary inquiries to ascertain whether insurers have complied with the act are important powers to monitor as frequently as necessary any given insurer. This is especially important as we embark on a new rate regulation regime.

We consider the inclusion of section 18 to be critically important for the protection of the consumer. By publishing information considered to be in the public interest, consumers will be made aware of such important information in the most appropriate way to reach generally the population of Ontario.

Section 81b provides that the financial statements required under this act shall be prepared in accordance with this act and the regulations.

At this point, we would like to make special reference to a statement pertaining to reserves. This is a major area of concern to consumers in that the way reserves are made bears largely on whether a company might show a loss versus a profit for any given year. A further concern is that the chairman of the Ontario Automobile Insurance Board, John Kruger, requested that large dollars or reserves be removed from the figures given by the industry for the purposes of the costing of the specific no-fault proposals being considered at the no-fault hearing which was conducted in April and May of last year. It would be our strong suggestion that the area of reserves be critically examined and specific regulations passed that would address the interpretation and calculation of these reserves.

We hope that the Lieutenant Governor in Council will move to ensure that insurance company accounting methods of reporting claims, expenses and revenues will be based on standard accounting and auditing principles that industry and other businesses are compelled to follow. We further urge that these standard accounting principles be followed by every insurer.

We consider subsection 98(1) to be one of the most important provisions in Bill 68. For the purposes of shortening up my oral presentation I am only going to make reference to certain of these regulations.

Specifically, clause 98(1)(ba) requires insurers to offer optional benefits in excess of those under clause (b). We would urge that the costing of the optional benefits be as modest as they can be.

Clause (bg) establishes requirements that must be met before an insurer declines to issue, terminate or refuses to renew a contract of auto insurance.

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For consumer protection it is critical that regulations are enacted to establish valid underwriting criteria and the requirements that must be met for the insurer to decline a risk or refuse to renew a contract. For example, the state of Michigan enacted the Essential Insurance Act that provides when a risk does not have to be renewed.

We have many documented examples of insurance consumers who are hurt by the lack of rules respecting nonrenewals. The superintendent's office has no legislation with which it can stop insurers from carrying on particular practices. Up to now, moral suasion is the only real tool

it has to deal with the many consumer problems reported to it. This is simply not enough.

The following are a few examples:

A person was involved in one accident in 30 years. A nominal payment of \$1,500 was made, not that the amount of the payment has any bearing. The insurance company refused to renew the contract, and in today's market the only way this person was able to get insurance was through the Facility Association. The reality is that once your company refuses to renew, no one else will take you outside the Facility or specialized markets.

The second example is where a person's broker was cut off by an insurance company and the person was placed in Facility.

In the third example a person was ill, not driving for seven to nine months, and did not renew his car insurance during that time. When he returned to better health he applied for insurance, but his company would not renew him and considered him a new applicant, as he had let his insurance lapse. He had to renew his insurance with Facility.

This happened to many of our other members as well, but in a particular situation I also added that one person even maintained insurance on his motorcycle, but when it came to renewing his car insurance was not able to do so outside of Facility. As far as the illness factor is concerned, the illness in no way took away the person's driver's licence. It was simply a matter that he was not well, not driving, so decided to not renew his insurance for that particular time period.

Another example, clause (bh), provides for the payment of premiums for auto insurance in such instalments as may be prescribed and prescribes the maximum rates of insurers. We would urge a regulation providing for a minimal interest rate.

At this point, we wish to state our displeasure with the intercompany settlement chart as it presently exists. It has created many injustices, particularly in parking lot cases. The most blatant example is where the vehicle travelling on what people would consider to be the throughway must yield to the vehicle on the right, coming out of a secondary parking lane. It appears to us that this was taken from the Highway Traffic Act and applied improperly to these types of parking lot cases.

When you talk to insurers about the injustice of the situation, they say, "We win some, we lose some." This is simply not fair to the individual insured, who is not looking at insurance as a global picture, but neither should insurers in any

given situation. They should care that fault be assessed justly in any given situation.

Clause (bn) prescribes time limits in respect of mediation and arbitration. We would hope to see a regulation providing for the speedy and efficient resolution of disputes.

Clause (bo) prescribes expenses to be awarded to insured persons under subsection 242d(11). If an insurer needlessly forces an insured into a proceeding, we would hope that the insured's expenses would be entirely paid by the insurer.

Clause (fb) prescribes classes of risk exposure to be used by insurers in determining the rates for each coverage category of auto insurance. As we discuss later, this is of particular importance to the consumer.

Equally so is clause (fe), which would allow for regulations prescribing classes of risk exposure which insurers are prohibited from using in determining rates for each coverage and category of auto insurance.

Under subsection 203b(2), information supplied by insurers as prescribed by regulations to applicants for auto insurance shall be deemed to be part of the application. This is a very good consumer protection provision. We would also anticipate that regulations will be passed prescribing information to be given applicants for insurance and named insureds.

Section 203c states that a broker shall provide names of all insurers with whom it has agency relations and all information obtained relating to quotations on automobile insurance for the applicant. This is very important, especially since we do not have a uniform class system. Consumers cannot compare oranges with oranges; they can only really compare oranges and apples.

In most instances, consumers deal through a broker. However, it is not like going into a grocery store where you can see the products lined up side by side and you can make an informed choice based on price, brand reputation, quality, etc. Having to use in most instances an intermediary, the broker, means that the broker may have knowledge the consumer is not in possession of and perhaps, had the consumer had possession of that specific knowledge, he would have made a different choice of company.

This type of provision makes a broker accountable to the insured, on whose behalf he is working, so the insured can make a more informed decision as to which insurance company he would rather place his insurance business with.

We would like to see the provision expanded to include other pieces of information that are critical to insureds in making informed choices; for example, whether or not the company has a forgiveness policy. Many insureds would rather insure with this type of company so that they know they will not be going into Facility if they have one accident. In other words, they will shop, not just on the lowest price, but for particular benefits offered by specific companies. A good service reputation will be more critical than ever in the new no-fault delivery system.

We strongly support subsection 206(1a). As the right to sue in tort will be severely curtailed in this no-fault system, we could not countenance an insured losing his no-fault benefits, for example, for giving false particulars, misrepresentation or failure to disclose in the application any facts required to be stated therein.

We further support the inclusion of statutory conditions 1a, 1b(1) and (2) and 1c. We are delighted that statutory condition 1b will provide for premium refunds for the entire period of the improper classification to insureds who have been incorrectly classified under the risk classification scheme of the insurer or that the insurer is required by law to use. This is a provision we have been campaigning for for years.

Monthly payments are necessary, as the price of insurance has become so high. Today, insurance premiums for a year often represent the approximate cost of two major appliances. Monthly payments will help alleviate the problems consumers have setting aside such a large sum of money at one time. Consumers will be more comfortable being able to make payments essentially in the same manner as they pay all other monthly bills and in accordance with the timing of their paycheques.

We wholeheartedly support the change in the limitation period from one year to two years.

Section 208a is another valuable consumer protection provision. Giving the consumer 30 days' notice of nonrenewal is critical so that he has the opportunity and time to investigate and seek coverage from another market.

With respect to subsection 208a(3), the language "containing substantially similar terms as the expiring contract" is worrisome. All contracts for auto insurance are the same with respect to contractual terms and all insurers must use the SPS 1 form. We would expect there would be a regulation providing for the same under the new system.

Moving an insured to another insurance company would seemingly satisfy the requirement of this provision. However, different companies have different practices in dealing with insurance with respect to discounts or a forgiveness policy for a first accident, to name just two. These practices may be a determining factor in whether an insured would wish to be placed with a given company. However, this provision does not provide for such factors. It strictly deals with the terms of the expiring contract. In our opinion, the wording of this provision is not sufficient and should be expanded to provide for specific company practices.

With respect to section 208b, it is critical that the Lieutenant Governor in Council pass regulations to ensure insureds are not moved into the Facility Association unnecessarily. This is happening when an insurance company declines to renew a risk. Generally, our members' experiences have been that no other company will pick up that risk.

Of the many examples we have seen where this has occurred, none has been for a bad accident and/or motor vehicle offence conviction record. We consider the need for such regulations to be of paramount importance and cannot stress enough our strong desire to see consumers treated more justly when facing a nonrenewal situation.

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Section 209a embodies the excluded driver principle. We strongly favour this concept where a spouse's bad driving record affects the other spouse's insurance premium on his or her own vehicle. In this instance, both spouses have insurance coverage on their own vehicles and the one spouse should not have to pay a surcharge premium when his or her spouse is already paying a surcharge premium. Either spouse should be able to exclude the other so that the better driving record of the one spouse is not jeopardized by the poor driving record of the other spouse. We do not endorse any suggestion that once a person is an excluded driver under a specific policy, he or she becomes an excluded driver under all insurance policies. This would not be fair or just and not within the spirit of the legislation as originally proposed.

With respect to section 230a, direct compensation for property damage, subsection 4 is particularly important as it preserves an individual's right to contest the degree of fault accorded him or her under the fault determination rules. It has been our experience that many of our members have been upset by the arbitrary

manner fault has been assigned under the intercompany settlement chart. Given the dissatisfaction members have voiced over the years for the way fault has been allocated by insurers, there is every good reason to believe that this provision will be used by many in the quest for a just allocation of fault.

Section 231a establishes the threshold no-fault regime. The wording of the threshold test is the area of Bill 68 that has been most vigorously attacked by critics. We strongly favour the Michigan threshold wording, which has had a high degree of success in Michigan. We feel the presently drafted wording of the threshold is unduly restrictive and does not allow all the most severely injured in automobile accidents to sue.

We have heard quoted that this threshold should restrict tort actions to the three to five per cent most seriously injured. If so few of the seriously injured are able to meet the threshold test, we believe that the reaction of the public and critics to the proposal is that this legislation is drafted for the benefit of the insurance industry and not the consumer.

We are concerned with language such as "an important bodily function caused by continuing injury which is physical in nature." We do not understand what these words mean and how they will apply to any given situation. We expect that with such words there will be much more litigation than with the words of the Michigan threshold. We feel that increasing the possibility of litigation is counterproductive to the no-fault regime. It will add more legal costs to a system that is attempting to eliminate costly litigation.

The words "physical in nature" are particularly limiting as they seem to make a distinction for psychological or closed-head injuries. It was probably not intended that serious closed-head injuries would be excluded from passing through the threshold, but the threshold wording might be interpreted to do just that. We strongly urge reconsideration of the threshold language such that those seriously injured will have access to the tort system.

We strongly concur with the elimination of the collateral source rule.

In section 232, accident benefits are provided for. There are four major areas of concern to us with respect to these benefits:

1. The weekly income benefit should be indexed for inflation. Further, the \$450 loss of weekly income indemnity benefit is too low. It simply does not reflect reality. It does not accurately reflect the average wage loss that would be incurred by an injured victim.

2. The cap on the long-term care benefit of \$500,000 does not seem appropriate. If an individual must be taken care of on a long-term basis, it should be for as long as the person requires the care without a capped limit of \$500,000. This is particularly important if the threshold language is not changed. Long-term care will have a maximum cap of \$500,000 and an individual, under such restrictive threshold language, may not pass through the threshold. In other words, who is responsible now for caring for this individual at the time the capped limit is exhausted?

3. The \$1,500-per-month maximum for long-term care is not a realistic amount, given the daily cost of such care administered by qualified professionals.

4. The loss of an injured person's wage for the first week of his injury should not be viewed as a deductible period. Every injured person not covered by some employer sick leave plan will be penalized by this loss of wage. We recognize that the cost of this item may be significant to the actual cost of insurance premiums and would suggest alternatively that an individual be able to purchase this one-week coverage at an additional cost if he chooses to so protect himself.

As time has pretty well run out, I will not go any further other than to say that there are many other provisions that we consider important. I will say we strongly concur with the special award provision that allows for the interest penalty. We strongly concur with the addition to section 393 that has to do with unfair and deceptive business practices, which will mean any unreasonable delay or withholding of benefit payments now will be an unfair business practice and therefore prohibited.

We also concur with the regulatory scheme that is at the end of our presentation, which has to do with rating as well as the type of classification that should be allowed.

The Chair: Thank you for a very detailed brief.

Mr Kormos: You expressed some real concerns about the artificial inflation of the numbers of people forced into the Facility Association. We have been asking the minister about that month after month and, basically, he has been totally ineffective in responding to that or dealing with it.

We have insisted that it is not just bad drivers, but also good drivers, senior citizens, young people, men, women or any number of people, for a whole pile of not-so-good reasons, who are

being forced into incredibly expensive insurance.

Don McKay, the general manager of the Facility Association, in his third quarterly newsletter for 1989 said that as a result of Bill 68 more and more people, not bad drivers but good drivers, are going to be forced into the Facility Association because private automobile insurers are simply going to decline to cover them and decline to take their business on, primarily because these people will not have employer-provided sickness benefit programs and that sort of thing, which makes them somewhat less profitable than the worker, male or female, who does.

That means small business people, senior citizens, entrepreneurs, the unemployed, a lot of women, in many cases, by virtue of the fact that either they are unemployed or they fall into those lowly paid jobs that do not have with them these types of benefits, are going to be forced into Facility.

Don McKay, the general manager of Facility itself, says that. Do you see anything in this legislation as it is presented that would halt or interrupt that flow into Facility, short of what you have recommended?

Mrs Newell: Yes, very strongly, because there are such strong regulatory powers that can be used under this bill that in fact regulations can be passed to prohibit that type of thing. As well, I think a very important section is section 372a, on ministerial policy statements, which allows the minister to make the policy statement that this will not be allowed, for example, if it does not serve the public interest. Therefore it becomes mandated and effective as of the Ontario Gazette date; so, very strongly, that can be provided for under this bill.

Mr Runciman: You are listed here as a counsel and corporate secretary for the auto club. Is that your only source of employment?

Mrs Newell: Yes, I am the lawyer for the club and its corporate secretary; that is correct. I am not in private practice in any way.

Mr Runciman: You do not take contracts outside of this or you have never been retained by the provincial government for any purpose whatsoever.

Mrs Newell: No, never.

Ms Oddie Munro: We are very appreciative of all the time and effort you have put into the presentation, and not just the presentation but also your analysis of the preliminary discussions, both reports and the work of the committee.

I am interested in your statements on consumers' rights. Taking a look at the Ontario statistics on the number of major and fatal accidents, I see, although it is very difficult to quantify, that between 1.5 per cent and two per cent of those that would qualify as major or fatal. So I think your statement on the threshold no-fault is that we give consideration to the percentage and not go below—I think you are quoting three per cent to five per cent as being the Michigan average; your concern is that it would go below the three per cent to five per cent; is that right?

Mrs Newell: With the presently worded threshold, the quotes we have seen say this would restrict from about three per cent to five per cent of people passing through the threshold. We feel that is too restrictive. We feel it should be a little more generous than that.

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Ms Oddie Munro: I think what we heard the minister say yesterday in his preliminary introduction to the committee hearings was that indeed some of the factors in the definitions of "threshold," "continuing physical harm" and "ongoing disability" have tried to take into consideration the consumers' concerns on what psychological trauma is, what physiological relationships with physical damage are and a host of other things.

Mrs Newell: I will say the accident benefit regulation does definitely provide for payments and weekly indemnity benefits in the case of psychological injuries. That is very true.

Ms Oddie Munro: That is right. So we are trying to take that into account. In addition, I think your comments on regulations are very important to us because we have heard criticism that in fact the bill should contain a lot of them.

The Chair: Thank you for your presentation.

Mrs Newell: I am sorry I raced through so quickly. Thank you for having us.

Mr Runciman: On a point of order, Mr Chairman, while we are waiting for the next witness: Certainly a lot of time and thought went into this submission, but I want to express a concern, and perhaps you may want to refer this to the subcommittee.

Witnesses appear before us and take up 25 of their 30 minutes in speaking to their briefs, which are in our hands in any event. I am wondering if it may not be more appropriate for us to try to provide some direction to the witnesses appearing that they limit the verbal reading of their presentation so that we have more opportunity to

ask questions. We had only three minutes and I do not think that is appropriate.

Mr Kormos: I agree with Mr Runciman that the 30 minutes is inadequate. No criticism of Mrs Newell, but obviously these 30-minute slots are not going to be adequate for hearing the submissions and asking relevant questions of all the personnel appearing before the committee. Maybe the committee is going to have to consider expanding that 30 minutes into 45 minutes, depending upon who is making the submission.

We might have to sit in the evenings or sit a couple of weeks longer, but so be it. It is only fair to members of the public that we let them speak out on the legislation. Otherwise we are worse than Bulgaria.

The Chair: I will take it as a point of consideration for the subcommittee.

We have representation from the Ontario Provincial Council of Labour. Given the discussion you just heard, I will still make the option available to you as to how you want to proceed because it is your 30 minutes until we have had a meeting of the subcommittee. Mr Herechuk, if you would introduce yourself, we are in your hands for the next 30 minutes.

ONTARIO PROVINCIAL COUNCIL OF LABOUR

Mr Herechuk: My name is Ed Herechuk. I am the president of the Ontario Provincial Council of Labour. With me is Reg Conrad, secretary-treasurer of the council.

We are the Ontario branch of the Canadian Federation of Labour and as such we represent the 60,000 voices of the Canadian Federation of Labour in Ontario.

I pre-read my submission coming up here. I expect it will take me somewhat less than 20 minutes to get through it, so that will give some time for questions. I will go through it in a proper manner. I will introduce the submission.

Simply put, the proposed Ontario motorist protection plan is totally unfair to the workers of our province and we will be addressing the legislation from a worker's view.

The Ontario insurance industry has made the government believe it is in a crisis when it continually registers massive and record profits. Furthermore, they have made the public believe that if something is not done, and soon, then insurance costs will soar. Frankly, we are not prepared to accept without question what the insurance industry has said. They have not made a full disclosure to permit the people of this province to make an informed judgement.

However, in spite of all this, this government has chosen to hand over to the insurance industry more than it has asked for and perhaps could ever have dreamed of.

In fact, an analysis of this plan discloses that no one except the insurance industry benefits. It also discloses that the cost of compensation for losses arising out of car accidents will be borne on the backs of Ontario workers. They will pay as much or more for their auto insurance. They will have far less coverage in the event of car accidents. They will have to exhaust their income continuation plans and sick leave in the event of injuries arising out of car accidents. The cost of these plans, as well as OHIP, will increase. Employers will pass that cost on to the workers. There will be a greater tax burden.

This submission analyses the particular aspects of the plan that impact on workers and makes suggestions as to what can only be considered a bare minimum of fairness to the province's workers.

Disability insurance and income continuation: The weekly no-fault benefits are only paid after all income continuation benefit plans by reason of employment are exhausted. We have fought hard for these plans in order to protect the interruption of our workers' income due to sickness or adversity; in other words, circumstances when they have no other recourse. They were not intended to be used for losses incurred in motor vehicle accidents because the auto insurance industry has taken on that risk and collected premiums from our workers for that purpose.

If those losses will no longer be covered under the proposed auto insurance plan, it clearly has to be more costly to employers to provide those income continuation benefits. It does not take much to realize that in the end our workers will be asked to bear all or part of that increased cost.

Sick leave: Again, our workers will be asked to exhaust sick leave credits before any no-fault weekly indemnities are payable. The legislation is different with respect to these benefits, as opposed to other income continuation plans. In this case only amounts "received" by way of sick leave benefits, rather than "received by or available to," will be deducted from no-fault benefits. But in spite of this wording, the effect will be no different. In most cases, those benefits will have to be exhausted.

In most cases, employees will not be entitled to take a leave without pay if sick leave credits exist. In other words, by virtue of collective

agreement they will have no choice but to receive all sick leave benefits until exhausted.

In any other situation where the employee has a choice to take sick leave or not, his or her only choice will be to receive the no-fault benefits. If his or her annual income is greater than \$23,000, then there really is no choice. Once again, we have fought for these sick leave benefits to protect our workers from adversity.

The patent unfairness can be illustrated in the example of the worker injured in one year and being forced to use unearned sick leave. If the worker becomes sick or disabled by an unrelated cause in the next year, he or she will have nothing to protect against the resulting income loss. The no-fault benefits will not be available because sickness or disability did not arise by virtue of a car accident. While workers are covered for both events now, they will be covered for only one in the future, in spite of paying for both forms of protection.

Weekly no-fault benefits: The current no-fault benefits of \$140 a week have been long considered inadequate. However, the fact that victims can sue for any income loss in excess of those benefits has meant there has been little pressure to adjust the weekly amount. However, now that it becomes the sole income replacement, the amount bears scrutiny.

Both commissions set up by the government have recommended an increase in the weekly indemnity significantly higher than what was proposed. If you adjust the current \$140 weekly amount for inflation since 1978, when it was introduced, it will amount to \$380. The proposed \$450 per week is in actuality only a \$70 increase over the current amounts. It is simply not enough.

Furthermore, there is nothing in the legislation to provide for automatic increases in the indemnities to keep up with inflation. If history is any guide, we can expect no increases. The \$450 is already inadequate and will become only more so with the passage of time.

Economic loss: Under our current system, all victims are entitled to recover any economic loss arising out of an auto accident. This includes all loss of income. Mr Justice Osborne, the chairman of the Inquiry into Motor Vehicle Accident Compensation in Ontario, in his exhaustive review of other no-fault plans, found that in every jurisdiction where there is a threshold the ability to recover economic loss is preserved. He has said that making people whole economically should be the point of emphasis of compensation

systems. He has said this system is "grossly deficient" in that accord.

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On the other hand, in the pure no-fault schemes the plans provide for substantially higher income-loss benefits than what is proposed in this plan. In this hybrid scheme, a huge gap has been left. It must be filled. Either the weekly no-fault benefits must be significantly increased or the right to recover economic loss must be preserved. Ideally, both should occur.

The no-fault benefits provide an income of \$23,000 a year. Anyone having income greater than that will have to bear the loss of the excess or pay for more insurance coverage. It is impossible to obtain disability insurance which will cover 100 per cent of lost income. As a result, victims will never be fully compensated unless the threshold is amended to permit them to sue for their economic loss.

Workers' compensation: Victims who are presently injured while on the job and are covered under the workers' compensation scheme have an election to receive workers' compensation benefits or to sue for damages. They will no longer have that election. This will mean that the workers' compensation scheme will have to bear a larger portion of the costs arising out of motor vehicle accidents. This, in turn, will increase the cost to the employers who fund this scheme. Ultimately, this can only mean less money available to our workers for salaries or other benefits.

OHIP: At present, the auto insurers indemnify OHIP for all medical expenses paid by OHIP arising out of auto accidents. This is estimated to be \$90 million per year. Under the new scheme, this cost will now be absorbed by employers. It is extremely convenient timing, inasmuch as there will be no basis for comparing the costs given to the new system. However, the bottom line is that employers will have to bear the costs, which means less money available for the workers.

Tax burden: The government has also granted the auto insurance industry relief from the three per cent premium tax usually paid by insurers. Clearly this increases our tax burden, and it is all being done to create the impression that the government is keeping insurance costs down when in fact all it has done is to shift the costs around and make it more difficult to determine the actual costs.

Threshold: It is clear that the government has chosen to limit auto insurance payments by the use of a threshold. The theory is that only the most seriously injured should be compensated. It

is estimated that under the proposed scheme only three per cent to five per cent of accident victims will recover compensation for pain and suffering. But by virtue of the definition in the draft legislation, even more stand to lose that right because it will be economically unfeasible to pursue such claims except in the clearest of cases.

The problem with the definition is that a victim will have to prove not only that the injury is serious but also permanent. As a result, a doctor hired by the insurer would easily be able to say that, while an injury is serious, it is not permanent because remedies will most likely be available in the future.

Furthermore, the definition requires that there be an impairment of "important bodily function." Just what this means in any given case is so subjective it makes the prospect of meeting the threshold nothing more than a lottery. Other jurisdictions with similar thresholds have used the words "serious impairment of a bodily function" alone. Their courts have held that an injury need not be permanent to be serious but a permanent injury is a serious one.

The logic of such wording is compelling. It is more certain; it is clearer that what the legislation wishes to do is to compensate only for the most seriously injured. Also, the subjective element of what is an important bodily function is eliminated.

Furthermore, it appears that there is an attempt to exclude physiological and emotional injuries and the resulting impairments of victims' lives. This is totally unacceptable in a day and age when we clearly have come to recognize that these are real and serious injuries. If they were to be included, the threshold would only permit the most serious of these injuries to be compensated. The scepticism of the industry should not deprive those who are truly and seriously injured from being properly compensated.

In conclusion, I would like to say that under this scheme workers will be paying as much as they now are for auto insurance, plus as much as eight per cent more. We have no guarantee that the rates after this year will be controlled in any way whatsoever, and they will never be able to recover their full economic loss arising out of an auto accident. The cost of compensating workers involved in auto accidents for their income loss will have to be borne by themselves. In other words, the province's workers will be paying more for auto insurance, receiving far less than what they do now and in most cases will never actually receive anything from their auto insurer.

The government has seen fit to introduce this hybrid scheme, and by doing so has disregarded the recommendations of two boards of inquiry which it commissioned.

In a pure no-fault plan, all victims are compensated for both pain and suffering and income loss. No victim is entitled to recover anything else. The benefits are less than what they can now expect, but all victims are compensated and there are fewer legal complications. In a threshold plan, only the most seriously injured are entitled to compensation for pain and suffering. All others can receive nothing in that regard. But those plans still place emphasis on making people whole economically.

Both have their respective tradeoffs. On the one hand, in a no-fault plan there may not be complete economic recovery, but there is entitlement to compensation for pain and suffering. On the other hand, in a threshold system, most can no longer be compensated for pain and suffering, but at least there is economic recovery.

Under the proposed scheme, this government is asking the people of Ontario to give up both compensation for pain and suffering and economic recovery, and all in exchange for the same premiums they already pay. This simply does not make sense. Either the premiums should be drastically reduced or somebody is going to make a lot of money. It is strongly suggested that this whole proposed scheme be scrapped and that the government look to the advice of the two commissions.

However, if the government insists on putting this scheme in place, it must not do so without the following changes. The threshold must include the right to recover any and all economic loss arising out of a car accident. The threshold to sue for general damages for pain and suffering must be amended to include death, serious disfigurement and serious impairment of a body function. The weekly no-fault benefits must be substantially increased and indexed for inflation. Sick leave benefits must not be deducted from any recovery, whether by way of no-fault benefits or for economic loss, and if amounts are available under an income continuation plan but not received, they must not be deducted. If they are received, then whoever paid those benefits must have a subrogated right to recovery.

The rest is examples given as to how we would be affected under the present insurance and under the new plan, so I am not going to go into those. We would like to thank you for the opportunity of making the presentation, and we are available now for questions.

The Chair: I have Mr Laughren; five minutes.

Mr Laughren: I will not take that long. Is the Mine, Mill and Smelter Workers Union a member of your organization? Is Mine, Mill in Sudbury a member of your provincial council of labour?

Mr Herechuk: No, they are not.

Mr Laughren: I was just trying to put you in the labour picture in my mind.

On the bottom of page 6 and the top of page 7, to me, you summarized your concern with the plan. It is not no-fault, which would have certain benefits, and it is not a pure tort system either, a long ways from it.

If the government were proposing a pure no-fault system, that would be very much similar to the workers' compensation system in the province. I do not mean in terms of administration, but in terms of the principle involved, that it is pure no-fault.

I am wondering what your thoughts are on that because I am not sure, when I finished reading your brief, if I know whether you would prefer to keep the tort system in auto insurance or whether you would prefer to have a no-fault system on the same model as workers' compensation, where you are guaranteed benefits but no right to sue. Which side do you come down on?

1620

Mr Herechuk: We come down on the side of the worker, whatever is best for the worker. If it happens to be a no-fault plan, as it is presented, then we would be in favour of it. We do not condemn or recommend acceptance of any plan until we have seen what the plan is. To say we would be in favour of a no-fault plan on a certain system or in a system other than that is very difficult. To say that we would seriously look at it and we would make representation either in favour of or against it. That is what we would do all the time, to keep the working person and the individual as the recipient of the best method.

The Chair: Mr Kormos, did you want two minutes?

Mr Kormos: I think I should, Mr Chairman.

It is obvious that you identify a whole lot of shortcomings in what is proposed here. The impression I get is that your understanding of it is that this is going to do precious little to reduce premiums. In fact, the government has already told us that you can expect more of the same.

If this is not going to reduce auto insurance premiums, and they have already become unaffordable for a big chunk of drivers in Ontario, and if it is not going to resolve the problem of

availability and there is that problem of more and more people being denied automobile insurance, not just bad drivers but good drivers who are being told, "No, we will not renew your policy," then they are being forced into Facility, the government has shown no interest in addressing the problem of availability. It certainly does not do this with the horrible bit of legislation, Bill 68. It shows no interest in dealing with the issue of affordability because it admits that Bill 68 is not going to deal with the problems of affordability. Then we have to look for a motive. We have to look for an agenda.

Most of us are familiar with investments and payback on investments. It does not surprise us to understand that the insurance industry, including the auto insurance industry, pieced off Liberal candidates to the tune of in excess of \$100,000 in the last general election. If this is not a return on investment, nothing is, because what this will do is—and there is no doubt about it—it is going to generate profits for the auto insurance industry that it never even dreamed of.

This is the most anti-worker legislation that could ever be put forward. The sad thing is that most workers in Ontario, because of what the Liberals have been letting happen to Ontario and industry here, are not in a position to be running out buying auto insurance stock. Let me tell you that if this bill gets passed, auto insurance stock is going to be as good an investment as that \$100,000 and change was in the Liberals back in 1987.

Thanks for coming.

The Chair: I will take that as a two-minute statement.

Mr J. B. Nixon: I would like to thank you for coming. I am not going to engage in rhetoric.

Mr Laughren: Don't be provocative.

Mr J. B. Nixon: I suggest to you that every member of this Legislature probably has very strong concerns about the situation of workers in the province.

Mr Laughren: Name names.

Mr J. B. Nixon: I have a question, though, referring to some of the examples you use. One of the benefits, as I see it, of the hearings is that some of the misunderstandings and misconceptions of this legislation will be cleared up. I would ask the parliamentary assistant perhaps to help me out, or his staff here.

I am looking at the example you use. You compare the compensation available under the existing insurance system and the compensation available under the proposed insurance system,

and you use the example of the mother crossing an intersection on a green light with her daughter. The driver runs a red light, strikes the daughter, killing the daughter in full view of the mother. The mother suffers nervous shock, makes \$25,000 a year and needs three years of psychiatric help before she is able to return to work. You suggest that under the present system she would get a pain and suffering award of \$40,000 and \$75,000 lost income—three times her annual salary. Then, on the other hand, you suggest that under the proposed system she would get nothing.

It is my understanding that under the proposed system indeed her recovery would be substantial. Perhaps the parliamentary assistant or his staff could help me out. Correct me if I am wrong.

My understanding is that she would have available to her her full loss of income. In this case, it would be in the order of \$450 a week. She would have available to her up to \$500,000 in long-term care for psychiatric counselling and any necessary expenses to facilitate her recovery and that counselling. If care in the home was required for her, that would be fully funded, without her having to go to court and without having to hire a lawyer, and it would be compulsory payment within 10 days in the case of lost wages and 30 days in the case of the recovery and rehabilitation benefits. Am I correct?

I just wanted to help you out there, because there are a lot of people putting out a lot of information that people are relying on. I think it is unfortunate that people are relying on that when they start to assess this bill. Perhaps you have a response.

Mr Herechuk: Yes, just quickly. I just want to respond to say that we did not say she would not receive anything; we said that she "may not." There is a large difference between those. We are just not sure what the final result is. There is a big difference between the two statements.

Mr J. B. Nixon: Perhaps the parliamentary assistant can clarify that. Is there some doubt?

Mr Ferraro: My staff can correct me, but—this is the Committee for Fair Action in Insurance Reform example, the Laura example that was alluded to yesterday—it is my understanding that she would be eligible for income replacement to the tune of 80 per cent of her gross earnings. I do not want to be repetitive. Mr Nixon has indicated many of the other benefits.

I would also like to say that this particular example, where they show under the present system a total recovery of \$115,000, makes no

allusion whatsoever to the cost of the legal fees, or if indeed that is a gross or a net figure. I suspect it is a gross figure.

Mr J. B. Nixon: Are you aware that in this example that is being put forward by the Committee for Fair Action in Insurance Reform, ie, the lawyers, if you changed the fact one little bit and had the child run out between two parked cars and be hit by a driver, the mother who sued for the loss of her child and her psychiatric losses, damages and so on would recover nothing under the present system—that is one of the real inadequacies of the present system—because the child would have been the wrongdoer, not the driver? The child being the wrongdoer, the mother cannot recover anything. That is one of the inadequacies of the present system that we are trying to deal with.

Mr Herechuk: We do not profess to say that the present system is a perfect system and we do not profess to say it is the worst system in the world. What we are saying is that we do not like this system that was put forward. Yes, there are inadequacies in the first system, but there are also inadequacies in this one. I think we find that these outweigh the other ones.

The Chair: Mr Ferraro, on a point of confirmation or clarification.

Mr Ferraro: Thank you. I just want to reconfirm, where I gave some question as a doubt, that although I felt the lady would be eligible in this example for income replacement, Mr Endicott has indicated to me that indeed we have changed the regulation—and everyone has a copy of the new regulation—so that it would definitively allow for Laura, in this case, to get the income. So it was changed.

Mr Kormos: On a point of order, in response to that, Mr Chairman: When the minister dumped all over FAIR members for that example, does that mean the minister did not really mean that they were wrong when they first gave the example but that the regulations were changed subsequently?

Mr Ferraro: No. There was an ambiguity in the regulation and it was clarified. The minister was totally consistent. I am sure you will agree.

Mr Kormos: No, I am just saying that the minister is full of it.

The Chair: Thank you, Mr Herechuk, for your presentation.

Mr Crouse, your brief is being distributed to the committee members. You have half an hour in which to make your presentation. A suggested guideline would be, allow 15 minutes for

presentation and 15 minutes for discussion, but we are entirely in your hands for the next half an hour. Would you introduce the gentleman you have with you, as well.

1630

BETTER (AUTO) ACCIDENT TREATMENT FOR INJURED VICTIMS IN ONTARIO

Mr Crouse: First off, I will let him introduce himself because I cannot pronounce his last name.

The Chair: Okay, that is fair.

Mr Deiulis: My name is Dino Deiulis. I am the vice-president of BATFIV.

Mr Crouse: My name is Steve Crouse and I am the president of BATFIV. I would like to state what BATFIV is here at the beginning. BATFIV stands for Better (Auto) Accident Treatment for Injured Victims in Ontario. It is a group of victims of automobile accidents who have been mistreated by the insurance industry and by our provincial government.

BATFIV is not a group of lawyers or a part of any government party. I want that clearly understood. We are here for the citizens of Ontario, and only under those circumstances. The reason I am here today representing BATFIV is due to the concerns of Bill 68, no-fault insurance.

As I go through this, there are some points I want very quickly to point out so that you will understand why they are there.

We do not wish to see Bill 68, no-fault insurance, passed because we feel that it is a step backwards from the tort system we already have. Our provincial government, when it was out getting votes to be elected, stated it would keep the cost of insurance down. Now that they are elected, they seem to want to make the insurance companies rich.

I would like to point out at this time that after talking to some accident victims and to the citizens of Ontario, nine out of 10 people do not wish to see no-fault insurance in Ontario.

I would also like the government to know that I have not come here after taking any drama classes. The reason I am stating that is I had an appointment to meet with a member of the Liberal Party. He stated to me that I should be a part of the other party because I am very dramatized to what I am talking about. This is a dramatized thing because we are getting shafted by the insurance industry and the government, so understand that.

As a citizen myself, I do not wish to see the right taken from me that enables me to sue the insurance companies that are causing all the problems I have at this time. It is no longer the fault of the driver of the vehicle that hit me. She paid her insurance. It is now the insurance industry that is causing me all the problems. Therefore, we need change, but not the kind of change to go back in time.

As you know, we have a no-fault auto insurance system in place. The provincial government demands that Ontario drivers—the private sector—purchase from the private sector—the insurance industry of Ontario. However, they cannot demand that the insurance industry pay the no-fault benefits now in place, \$140 per week, to victims. The government of Ontario says it cannot interfere with the private sector when we asked for our benefits, yet it demands us—the people, the private sector—to purchase automobile insurance to be able to collect the \$140 per week which we are entitled to now but which we cannot seem to get from the insurance industry, or to get the government assistance.

How in God's name can the government force the insurance industry to pay \$450 a week with the new system? Take note of the threshold. We believe approximately 98 per cent of those will not be able to collect their benefits.

Try to understand, I am not educated like you people either. I have come from a hard messiness, what has happened to me here in this accident.

The government and the insurance industry had better start listening to the citizens of Ontario, who will be speaking out against the problems we see in our province. The major problem we see is Bill 68, no-fault insurance. The citizens of Ontario will be purchasing a product that is not worth the paper it is written on. This no-fault insurance will cause many disability insurances to significantly increase premiums because this has to be claimed before you can collect on the no-fault insurance.

Our provincial government complains about the federal government and free trade and how it is taking jobs from the citizens of Ontario. I believe that no-fault insurance is going to help take more jobs from Ontario due to the fact that the companies are going to be paying for the disability insurance and the new medicare. Due to this, much of our industry will be moving out of Ontario in the future.

The government is trying to change too much with this new system and is not getting to the real problem. One positive aspect of the no-fault

insurance is the quick medical treatment if the threshold is passed. The government says the lawyers are concerned about losing money because of the new system and that is why the lawyers are fighting it. The lawyers do have a great deal of business to lose at the start, but when people have to start hiring lawyers to fight for their disability insurance and not the automobile insurance they possibly stand to gain in the end.

I do believe that some of the lawyers are sincere in their concerns for the victims in their fight against no-fault insurance. Again I will state that BATFIV is fighting no-fault insurance because we believe it is not what the citizens of Ontario want or need. It will not help the majority of auto accidents.

The only one that benefits from this new no-fault insurance system is the insurance industry. We have examples of the results of claims that would be handled in the tort system now in place and the results of claims that would be in the future, in the new system. These examples were given to us with permission to use them at this hearing. We would like to have more information for you on the new no-fault insurance but we have been unable to obtain detailed information from the government. BATFIV definitely wants to see change in the system we now have, but most certainly it is still a better system than the new system would be.

In closing, if Mr Elston and Mr Peterson feel that the citizens of Ontario want this new no-fault insurance, maybe Mr Peterson should call a provincial election to see if he would still be sitting in the same seat he is today.

To you, Mr Peterson, I say today that if you pass this no-fault insurance, I believe you will be signing the execution for a lot of auto accident victims in Ontario. I strongly believe that when the next election comes up you will no longer be Premier of Ontario.

I am stating this fact about Mr Peterson. The number one reason is that I have seen and heard of four suicides because of the way the damned insurance company treats accident victims today in the no-fault system? I am strongly opposed to the new system for the same reason, because it is a no-fault system and we cannot collect \$140 a week from the insurance industry. I am very unhappy with what you are talking about, coming up with the new policies.

I want to use one example that I have here, and I do not want to go on to—there is about half a page. I started on Friday getting a petition signed and this is why I am saying nine out of 10 people

do not want it. I went into a mall and I was not in there half an hour and I must have about 200 signatures, but I got kicked out because I did not have the law on my side to be able to be in there. I did not know I was not permitted to do it. It was private property. I am sorry; I would have had them here today for you and I think I would have had quite a few of them.

I am not going to go over the examples that are there because you have heard them and probably seen them from FAIR—Fair Action in Insurance Reform—and other people. I want to talk about my own accident and then I will leave you to questions and anything you want that we have come up with in BATFIV.

Number one, I have heard the insurance people speaking here today and I want to say exactly what happened to me, quickly, in an accident. In October 1986 I was in an automobile accident. My automobile insurance started paying me \$140 a week; a self-employed person. I was making anywhere from \$40,000 to \$70,000 a year in one business. I had a second business. I had to close that right away. I cannot even claim that because it was operating only about a month. The other business was running about two years.

I have had nothing but insurance companies following me around asking me what I am doing, taking pictures of me, and I hope they are taking them today—maybe they will not be charged for it—but anyway, as it stands that happened. Then my house—I am going to tell you about the insurance industry, and this is the way it was.

My house had the Cadillac of insurance. My basement wall cracks. The basement fills up with water. I bought private disability insurance; three insurances nailed me to the cross. One, my no-fault insurance cancelled me out. My disability insurance did not pay. The government is stating now that we should buy some extra coverage to protect us. They tell me because I can use the telephone I am not entitled. I was a serviceman. How in hell can I service equipment on the telephone? Those are questions I want answered by the insurance industry.

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Number two, the insurance industry had the gall to tell me that God was underground and cracked my wall to my house. I asked them how in hell He did it, because I have never heard of God doing such things.

These are the types of things that are happening with the insurance industry to shaft the citizens of Ontario, and I am not only talking about auto insurance—I will get to that—I am talking about every damn bit of it. Excuse my

swearing. I am upset at the way we have been treated. We have been mistreated by our government and by the insurance industry, and all that it is is to make a lot of money for them.

With respect to my accident as an automobile person, right now I have the right to sue. I am maybe going to collect some of the money back that I am losing—some. Because of the circumstances, they are going to use every loophole the government has set out in law to destroy me and make me look like a damn fool.

I will take that but I will tell you one thing: this is one man who is going to be standing here. If the new no-fault insurance goes in, I am going to fight it and I am going to fight the government in every way I can, because it does not care about the people, that I have seen.

I am very unhappy about all this. Under the new system, I would be out to lunch. I might—might—be lucky enough to collect the \$450 a week, for the simple reason that they may turn around and say I can use the telephone and cannot collect. That is the type of thing we have been getting.

You people and the Insurance Bureau of Canada have sent out numbers stating, "Call 1-800 and we'll help you." I am going to tell you the kind of help I got when I called. I called them up and they said: "Hire a lawyer. That is what you do. Hire a lawyer because we can't help you now." I hired my lawyer and I called them up and they said: "We can't help you. You have a lawyer involved." Then when I went a little bit further they said: "You are too far in litigation. We can't help you, Mr Crouse."

I called Murray Elston. He says he cannot help me because it is interfering with the private sector, yet I am the private sector and he demanded I buy it. How in the blazes can the government turn around and state things like this and yet use us, as private citizens, as fools?

That is as far as I can go. From here on in, on any questions you wish to ask, I cannot name names of members in BATFIV except for the president and vice-president; they have given that permission. We will answer any question we can.

But I will tell you another good little sample that was done to somebody, if you want to hear the low, lying deals the insurance companies do. One lady got smashed up in a car accident; not her fault. Mind you, my accident was not my fault either, if I may point that out. A lady ran into me and it was a police officer as a witness. I may lose my home and everything because of this accident. I do not know yet. I cannot work yet,

unless they say I am working now talking to you but otherwise—this lady got smashed up in a car accident. She lost her memory. Her daughter was killed.

She had disability insurance. The disability insurance people walked in the danged hospital when she had no memory of who she was and asked her to sign a document stating that they would give her 70 per cent of her income from the automobile insurance, and she did, because at that time she did not realize—it has been taken away now, it is not going to happen to her, but that is the kind of low, lying life the insurance industry will play on innocent victims of Ontario, and this government is going to try to help them out to get richer? I would like to know why, and I will close on that.

The Chair: Any questions? Mr Kormos, five minutes.

Mr Kormos: I may not need as much as the five minutes and perhaps will reserve the balance.

I do not know if you were here earlier, Mr Crouse, when Guardian Insurance made a submission. They said a whole lot of things, but one of the things they said was that in this new plan the insurance companies will be dealing directly with their own customers to settle most claims. "This will greatly improve the service provided to the insurance buyer."

I get the impression that your experience would indicate that the last person in the world you could expect to settle a claim fairly is the insurance company that owes you money. They seem to have short arms and deep pockets when it comes to paying out compensation.

Mr Crouse: I will speak to your question and maybe we can give an answer very easily to you. I called up the insurance company about my accident and said: "Look, I'm losing my home and everything. I can't work." "Sell your house so you can live." Those were the words the insurance company said to me, to sell my home.

I worked hard to get my home. They do this to every accident victim in Ontario that we have associated with yet, and I will tell you this, there are 450 members verbally in BATFIV, and listed in the members are 150 around the Kitchener-Waterloo area. We do not wish to see this no-fault insurance because these are the things the insurance companies do to the people.

I am saying this strongly in this answer so that hopefully the Liberal government will try to understand. There is only one person in the Liberal government I have any faith in right now and that is Herb Epp, because he stood by me. I

will give Herb Epp all the credit in the world. Otherwise I have no faith in what this government is trying to do to the citizens of Ontario right now.

The Chair: Mr Kormos?

Mr Kormos: I have no questions at this point, but I am reserving the balance of my five minutes.

Mr J. B. Nixon: Mr Crouse, thank you for your presentation. It is worth your coming and being heard, I believe. I just want to clarify a couple of things. My understanding is that in your personal circumstances—I do not want to get into it—you started a lawsuit finally, at some point.

Mr Crouse: Yes, I did; three of them.

Mr J. B. Nixon: Three of them.

Mr Crouse: I have to sue my no-fault. I have to sue my disability. I have to sue—

Mr Kormos: No-fault?

Mr Crouse: Yes. We have a no-fault in place right now and I have to sue that to get my \$140 a week.

Mr J. B. Nixon: Let me deal with them serially or in order. When you sue for your disability, you have identified a problem which I think the government has identified, and that is that insurance companies have a terrible record in paying the existing no-fault benefits. Existing no-fault benefits are ridiculously low anyway, and \$140 a week is less than the minimum wage.

There is no compulsion that they pay those no-fault benefits now but under the new legislation—I just want you to know this—there is two per cent interest per month tacked on. There is ability to get a court order. The superintendent can get a court order compelling them to pay or else pay thousands of dollars in fines if they do not pay the no-fault benefits on time. There is a change in the system and there is an incentive.

Let me just go on. One other thing: you start a lawsuit for your losses. You are not suing your own insurance company on that one. You are suing the other guy's insurance company. If Mr Kormos drives down the road and smashes into you and he is at fault, your insurance company has to sue his insurance company. That is the whole problem we get into, because everyone then has to go out and get lawyers and everyone has all sorts of problems.

You talk about the suicides that people commit when they are undergoing the stress of litigation. I agree with you that the present system can ruin people, by waiting years to get to trial, with five or six or seven defence medical examinations,

being followed around by private eyes. I am telling you that comes with the litigation. When you do not deal with your own insurance company, you have to sue the other guy's insurance company.

Mr Crouse: Yes, I have to sue the other guy's insurance company.

Mr J. B. Nixon: Yes.

Mr Crouse: It is not my insurance company that sues the other insurance company. All my insurance company cared about was paying, when it was demanded to pay, the \$140 a week until it could find a loophole in it to try to crucify me. This is not only my case I am talking about. I am talking about every victim in Ontario. I am talking about the insurance industry. You hear the press put out words saying, "This big claim was paid and that is why your insurance is skyrocketing." Yet there are people who are still waiting 10 years to get the same claim they were supposed to get because it is in appeal with the courts.

Mr J. B. Nixon: Have you ever heard of the situation where someone is involved in an accident and he is seriously hurt and he loses his business? I bet you have some members in BATFIV.

Mr Crouse: Yes, I have lost my businesses because I have been hurt and I cannot work any more.

Mr J. B. Nixon: They have to go to court to try to collect. They cannot prove the other driver was at fault and they get nothing. Have you heard of those situations?

Mr Crouse: We hear of those situations every day because the insurance industry tried to insinuate that. I will give you what my own insurance company did to me. They asked me to go in and see a film. They said: "Mr Crouse, you are walking down the street. You walk through a crosswalk and a bus runs over you and kills you. You cannot be mad because you're dead." I said, "Fine." But they said: "Let's back up. You walk through the crosswalk. You're in the right. It knocks you down and makes you a paraplegic from the neck down. You are not supposed to get mad at these people. You are supposed to take the problem for being at fault for being there at the wrong time."

I agree that the law has to be changed with the insurance industry, but not the deceit, the crookedness, the fraud, and I use the word "fraud" because I think the insurance industry is almost like organized crime, the way I have seen what it is doing to the citizens of Ontario. If the

Liberal government is going to sit in the seat with them, then it is too.

Mr J. B. Nixon: One final question: On the examples you refer to, you said you asked permission to use those examples. Where did they come from?

Mr Crouse: Some are from accident victims and some are from a group of lawyers out of London.

Mr J. B. Nixon: You have a long list of examples here.

Mr Crouse: Yes.

Mr J. B. Nixon: They are basically the FAIR Reform examples that have been touted around.

Mr Crouse: No, we have examples in there of real accidents of our own.

Mr J. B. Nixon: Are you aware that in any of those examples, you can just change them the slightest little bit and the victim would get nothing under the tort system. Are you aware that what FAIR says about the existing recovery under the legislation proposed by the government is wrong? Are you aware of that?

Mr Crouse: Yes, I am aware that they are saying—

Mr J. B. Nixon: I would suggest to you—think about it—some of this stuff you are hearing and some of the information you are getting is wrong. Make a considered effort to think about it and get the right information.

Mr Crouse: If I am getting wrong information from the lawyers, then it is the Liberal government's fault, because I have been asking and asking and asking for the information for the last six months and I am not getting it.

Mr J. B. Nixon: Herb Epp will probably give it to you.

Mr Crouse: Yes, Herb Epp is after it for me now—

Mr J. B. Nixon: Good.

Mr Crouse: —but I have been after other people. I asked Mr Elston himself for it. I have asked in meetings. We are not getting it; I am sorry.

Mr Laughren: Herb Epp should be the minister.

The Chair: Mr Kormos, three minutes.

Mr Kormos: Look, the bottom line is that you and a whole lot of other people in Ontario, back in the general election of 1987, heard the Premier (Mr Peterson) when he was campaigning. He promised that he had a specific plan to reduce auto insurance premiums. You know what a

whole lot of other people in Ontario know now, that it was a lie because he was not able to come up with anything. He came up with a \$7 million to \$8 million—taxpayers paid for every penny of that—auto insurance board. You are aware of that. That did not come up with a reduction in auto insurance premiums.

I remember asking people such as Murray Elston, the Minister of Mythomania or Minister of Financial Institutions or whatever you will and asking him what this specific plan was. It is as if they were going to give it to me on my birthday. You know, they were trying to keep it a secret, like they wanted it to be a surprise. They cared that much about my welfare that they still wanted me to be surprised.

The fact is that what the government has done is that it has played little games, has tinkered around. Like the kangaroo that gets out of his mother's pouch, they will occasionally be able to climb up out of the back pocket of the insurance industry, spitting out pocket lint left and right, because that is where this government is—in the back pocket of the insurance industry.

Instead of any plan to reduce premiums—this plan is not going to reduce premiums—and instead of any plan to make insurance more available or fairer, because this insurance plan is not going to do that, they come up with a plan that is going to pick your pocket, that is going to mug

you, that is going to snatch your wife's purse and load up the auto insurance industry with profits that are just going to be incredible.

I agree with you, Mr Crouse, that the last person we can depend upon to help us in a time of crisis is the auto insurance industry. There is not a victim in Ontario who would not understand that he has been victimized twice: first by the bad driver and second by the insurance company described in the manner you just did, which is out to mug him all over again. Thank you very much for coming today.

The Chair: Thank you for your presentation today. We appreciate it.

Mr Crouse: I would like to state one thing, that the victims who have been smashed up in accidents no longer—the insurance industry is at fault today for why so many victims are not being paid. They are mistreating them. They do not care about them. They only want their money. They come to me and ask me for my car insurance and they do not want to wait any time; they want it today. But they sure do not want to help us out.

The Chair: Thank you for your presentation. The committee stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1654.

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From the Guardian Insurance Co of Canada:

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From the Motorcyclists' Coalition on Insurance:

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Cooper, John, Associate Editor, Cycle Canada; Editor, Motorcycle Dealer and Trade

From the Progressive Casualty Insurance Co:

Rogacki, Andrew, General Manager, Canadian Operations

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Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 10 January 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 10 January 1990

The committee met at 1000 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I would like to get the hearings under way this morning. I ask the representatives from the Canadian Paraplegic Association to come forward, whoever is going to be making the presentation. You have half an hour of time. We do not have your brief yet; we are working on it. Within that half-hour I would recommend 15 minutes, if you could, for presentation and allowing about 15 minutes for questions and answers. You are more than welcome to come to the front table here.

CANADIAN PARAPLEGIC ASSOCIATION, ONTARIO DIVISION

Mr Maier: Good morning. My name is Dick Maier and I am the chairman of the Canadian Paraplegic Association, Ontario Division. With me is Bill Hoch, the executive director of CPA Ontario. We are also represented by Karen Glen, our director of information and resources, and Kathey Smith, executive assistant. We also hope that Barbara Turnbull, one of our board members who I am sure is known to all of you, will be here before our presentation is over.

I would like to make a few introductory remarks, after which Bill will review our brief, following which we would like to answer any questions you might have. We appreciate the opportunity to appear before the committee to express our views, which we have previously expressed to the Osborne inquiry and the Ontario Automobile Insurance Board.

The present system of fault-based compensation for the victims of road accidents has imperfections. However, the proposed no-fault scheme will not work as well as its advocates claim in providing adequate compensation to innocent victims of severe accidents. This is the thrust of our position. I would now like to ask Bill to present our brief.

The Chair: If I may interrupt for a second, it is in the package of material that was distributed yesterday, exhibit 1.

Mr Kormos: Mr Chairman, I thought you said—

The Chair: No, I apologize.

Mr Kormos: All right, I accept your apology.

The Chair: Why don't you start reading it or making points from it, and I am sure the committee will be able to catch up.

Mr Hoch: The issue here, ladies and gentlemen, is that, like it or not, you are playing with people's lives. You are going to make some decisions here in the next couple of weeks and over the next month that are going to place people in institutions for the rest of their lives, that are going to deny them dollars and money which would be paid to them now in a system that we recognize is not operating well.

We have been wooed by the minister, we have been wooed by the Insurance Bureau of Canada, we have been wooed by Fair Action in Insurance Reform and other organizations, and we wish to reassure you that we are in nobody's pocket on this issue. We are concerned solely about what is best for our members. The issue here is not whether it is no-fault, threshold no-fault or the current system, but what is the best system available. Therefore, we believe that this system that is proposed, although it is not perfect, is certainly better than the one that we have.

In our brief, on page 2 for those of you who have it, I will not go through the whole historical aspect of this, but threshold as it exists denies real economic losses and we have some concerns about that. We have some concerns because people will be hospitalized who will sustain either short-term or long-term permanent or serious or not serious injury, depending on how the courts define an injury, and as a result will not necessarily, in our opinion, be dealt with fairly. We have some concerns about the real economic loss that people undertake.

While we accept the fact that no-fault benefits, as this system is proposed, will produce results that, for 90 or 95 per cent of the population, are far better than the system that we have, this still presents limitations for our future members and our future clients who will become members because of accident and not necessarily because of choice.

What are the inadequacies then of the Ontario threshold system as we see it? The definitions cause us real concern. Words such as "permanent" and "serious" will all have to be defined by the courts. We know that in court systems across North America "permanent" and "serious" are defined in 1,000 different ways by 1,000 different systems, and we find that really to be unjust.

We find fault with, and I guess the word is appropriate, the word "continuing" because many of our members, the people whom we service, will have on-again, off-again rehabilitation needs. While they may fall into the serious, they may not fall into the serious category. So they may be assisted by us or by your government for one year or two years and then they fall off the wagon and they are reasonably well, but then they are back and they need assistance two years later. This bill will no doubt deny them that type of follow-up.

Some of the other words, such as "physical in nature," cause us great concern. Physical is one part but we are putting together emotional, social, educational; you name it, we are putting it back together, and physical is just one part of it. We think that should somehow be reflected in this legislation.

Spinal cord injuries are not always permanent and serious. They are serious when they happen, but we have walking paraplegics, we have persons who are rehabilitated successfully for short periods of time, who sustain minor nerve damage. What we do not know are the long-term implications of this. At least in the current system people can serve notice that they want to be heard at a later date, that they have some concerns about where they might be when they are 25 or when they are 30, because most of our people are indeed between the ages of 18 and 22 when they sustain their injuries. Given that fact, we have some concerns about that whole process of "permanent" and "serious," because we may rehabilitate them and get them back into the community but then they are back with us.

In regard to the areas of medical rehabilitation and long-term care, we view this as warehousing legislation. For quadriplegics, for high-level quadriplegics, for ventilator-dependent quadriplegics, this will force us to build warehouses to store these people in. It is an exact opposite thrust to what the Ministry of Health wants to accomplish and it is opposite to what the Ministry of Community and Social Services is trying to accomplish. We view this as a step backwards.

The issue about the number of dollars available for attendant care and for assistance in the home we still view as inadequate. Within the past month we have received documentation from the Ministry of Community and Social Services advising us that we should be paying for our attendants, on average, between \$11 and \$12 an hour in an attendant care program that we run. If you take that \$10 and divide it into \$1,500 or \$2,000, whatever the number will be, what you are finding out is that people are going to get about five hours of care a day, six hours of care a day, or less, over a 30-day period for those who need it. Not everybody will need it, we recognize that, but we have some concerns about the dollar level.

We have that concern because there is no guarantee that even if you sue, there is going to be money there. People will buy the cheapest insurance available, and then who pays? The government of Ontario pays, I pay, you pay. The question is, who should pay? I do not believe for a minute that all of those should be passed on to the taxpayer and I do not believe for a minute they should all be passed on to the insurance company. I think there has got to be a reasonable level.

The method of payment presents problems for us when we are talking about expenses for rehab or equipment or whatever. Words like "expensed" are in there, and we know insurance companies will follow that to the letter of the law. Some will be very good to our clients: some will provide them upfront money and get them back on their feet. Others will take that money and say: "Show me the receipt. So it's going to cost you \$50,000 to retrofit your house, or \$100,000 to retrofit your house. Show me the bill. Then we'll pay you." That is the reality of the insurance companies in Ontario. Some are good; some are bad.

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The duration and criteria item in the original legislation causes us some concern with the \$450-a-week level. We recognize it is nontaxable dollars but we recognize that half the population in Canada currently earns in excess of \$492 per week, as pointed out by Statistics Canada. We also recognize that half does not. Given that, what kind of real economic loss does that mean? It means that for average family people who own a home, who sustain an injury and who may or may not be able to receive dollars, even though they are entitled to sue, there may be no dollars there. Then what? Then they are going to be forced to sell their house, to

give up all those things that according to legislation we have now, they would be allowed to keep. We think that is unfair.

We have some concerns about the no-fault issue and the exclusions, and we have a concern about the exclusion on alcohol, not because we agree with drinking and driving, which we do not. We are firmly against it and we are opposed to it. But anywhere in the next year 100 people who drink and drive will pay one penalty and will be confined to a wheelchair or will have to spend the rest of their life in an institution perhaps, and they are asked to pay a second penalty, that is, to receive none of the assistance that everybody else in this province is entitled to. We think that is double jeopardy. We do not agree with drinking and driving; we do not think it should happen. But the reality is that it is going to.

We have some problems with the workers' compensation section and the fact that it will reduce benefits. We also have some problems in that we believe a lot of these costs are going to be passed on to Ontario employers in the form of long-term disability insurance. Those premiums will go up when the claims for those start coming through at a higher rate, rather than through the insurance program, and we believe this is just passing that information and that dollar back to the insurance company.

We are concerned that hotels and restaurants, etc., will no longer be liable. We are concerned because we think they should be responsible citizens too and have to act responsibly. You do not have to act responsibly if you have no liability, and we are concerned about that.

When it comes to the method of payment, we believe, certainly for our seriously injured members, that payments should be upfront lump sum payments and members should have complete control over those funds. If we are expensing it and paying it out all the time, it presents real problems.

The reality is, and this was not in our submission and I will just add it for the record, that if you take an individual who is a quadriplegic—I am talking in 1988-89 dollars and there is no effort to index dollars here—the real cost to get someone back living in the community over a 10-year period—by the way, quadriplegics are living 10 years now; they used to die so it did not matter; now they are living and we are wondering if it really matters—is \$1.129 million.

Those are our figures from across Canada when we look at our clients and what it really costs. It is less for paraplegics; it is in the \$400,000 to \$500,000 range. For walking

paraplegics it is about \$100,000. It is reasonable legislation, but it needs to be fixed up in some areas.

Mr J. B. Nixon: I have a couple of questions. You made a point about lump sum payments. Can you just quickly elaborate on that, because I am not sure I understood what you were getting at?

Mr Hoch: As I read the legislation, it talked about expending the money and said that the insurance companies would be liable to pay a \$500,000 sum over a period of time based on expenses. In order to get that now as a lump sum, we believe, and we are not sure about that either, you would have to fall in the serious or permanent injury category. It might mean that in regard to that \$500,000 which should be paid to you right up front because you are a paraplegic or quadriplegic, you might still spend two years in court trying to get that \$500,000 or \$1 million or whatever it is that you believe you are entitled to.

Mr J. B. Nixon: I am not sure that is the case. Parliamentary assistant?

Mr Ferraro: I think there is a little confusion, Mr Chairman. Can I get Mr Endicott to clarify that a little bit? There is a distinction, I think, that has to be made between the \$500,000 and the lump sum payment.

Mr Endicott: In regard to the \$500,000, are you referring to the long-term care and the medical rehab accident benefit?

Mr Hoch: We are talking about all the dollars that would be available to a person in this plan regardless of whether it is lump sum, weekly payment or whatever. It should all be paid up front in the case of serious and permanent injury to the maximum specified in this policy.

Mr Endicott: I see. Okay. Well, it is on an expense-incurred basis for the benefits, that is true, although the word "incurred" has been removed from the language of the schedule, to make it clear that the disabled person does not have to incur the expense at the outset before being reimbursed, that it can be paid in advance.

Mr Hoch: Thank you. I appreciate the information. That is important. But we still think that money should be up front and people should have some right as to what they do with that money.

Mr J. B. Nixon: I have two questions. I am not sure why you say that because, unless people can establish that it is going to be a long-term or a permanent injury, they are not going to be able to demonstrate that they are entitled to \$500,000. What would you do, give them \$500,000 lump

sum and say, "Oh, and if you do not need it, give us back what you do not need"?"

Mr Hoch: We believe there are certain injuries that are already serious and permanent and should be defined. With that lacking, what it really means is that you defer having the ability to get to those moneys until you either take a lawsuit and the court proves that it is a serious and permanent one or the injuries are defined in the legislation. If quadriplegia is not a serious and permanent injury, then we have got problems.

Mr J. B. Nixon: I do not think anyone in his right mind is not going to recognize quadriplegia as a serious and permanent disability, to be fair. Quite frankly, if I can just suggest to you, I think a quadriplegic not only would have the right to sue to the entitlement to the expanded no-fault benefits—\$500,000 long-term care, \$500,000 medical and \$450 weekly—but would have the right to sue because it clearly exceeds the threshold. In any case, that quadriplegic would be much better off under the proposed system than under the existing system, I would think.

Mrs LeBourdais: You have expressed concern over the wording of the threshold. Is your concern specifically over the combination of "permanent" and "serious," or would you have some other wording in mind that you would be more comfortable with?

Mr Hoch: That is a good question. I did not think you would allow us the opportunity to respond to that and I really did not prepare. I would suggest to you that if you separated "serious" and "permanent," it would give us a better basis on which to deal with that because many of the injuries are permanent. The ones that are serious, I think, the courts should define in another way. But I cannot at this point back that up with anything.

The Chair: If I could be of any help, we are holding hearings until the midpart of February so if you wanted to get something back to the committee to respond to Mrs LeBourdais's question, we would be more than happy to take it into consideration. Just send it care of the clerk.

Mr Hoch: Thank you.

Mr Kormos: Thank you, Mr Chairman, and good morning to you.

The Chair: Good morning.

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Mr Kormos: You have got a well-detailed critique of the legislation. I am concerned that in view of the fact that you are what you are in terms of who your organization represents and in view

of the fact that Mr Elston and the government talk about this particular bill having been—let me put it this way: They did not want there to be any hearings initially, because they argued that it had already been discussed ad infinitum and everybody who was capable of contributing had contributed and everybody who was capable of being consulted had been consulted. I get the impression, in view of your critique, that you were a part of the process of preparing this particular bill, or were you not?

Mr Hoch: We were indeed and we thought we were welcomed warmly, but we are not convinced that many of our concerns were adequately dealt with.

Mr Kormos: Long-term care benefits, \$500,000, but payable at a maximum of \$1,500 a month, \$50 a day. What does that mean to a person who requires long-term care? What does that represent?

Mr Hoch: Probably the best example I can give you is that we have orders in council for people today who need attendant care and are receiving minimal attendant care of six to eight hours per day, and I am generalizing. That is to get them out of bed, dressed and back into bed in the evening with nothing in between, at somewhere in the range of \$20,000 to \$25,000 a year.

Mr Kormos: What does \$1,500 buy you then?

Mr Hoch: According to the government average from the Ministry of Community and Social Services, \$1,500, the figure that we just received on 21 December at about \$11 an hour, will buy you about five and a quarter or five and a half hours of care a day.

Mr Kormos: What do you do for the rest of the day?

Mr Hoch: You have to remember every one of these is individual. Some of them are quite capable and will be working and so on; others will be wondering what there is to do and will be looking for things to do. I think the reality is that you rely on friends, you set up a network system or if you are young, your family is often forced to take on this burden. In fact, that is one of the criteria for receiving home care or others, that you have to have some kind of support system. If you do not have that, cannot provide that and cannot get an order in council, then you become institutionalized.

Mr Kormos: You have indicated that big numbers of the people whom you are representative of tend to be young persons. If a young person were to fall into that class of persons requiring long-term care, it is conceivable then

that that \$500,000 could be used up well within that person's lifetime, even at a modest rate of \$1,500 a month.

Mr Hoch: Well, \$1,500 over 10 years would be \$120,000, \$150,000, somewhere in that range in today's dollars.

Mr Ferraro: It is 27 years.

Mr Hoch: Is it 27 years? Okay.

Mr Kormos: So if you are talking about an 18-year old, by the time he or she is not even at what most of us regard as retirement age, that money would be long gone.

Mr Maier: That is right, because we are not aware of any indexing.

Mr Kormos: Indexing is imperative, is it not?

Mr Hoch: It is to us, because for support services in general—and it is not just attendant care; it could be everything from an attendant you need at work to someone else—the total cost we have been able to put together from all our CPA files across this country is in the range of \$750,000 over a 10-year period, from initial costs to set somebody up in his or her home right through, just for support services. That is our figure.

The Chair: Your colleague has indicated he would like a minute if possible.

Mr Kormos: I will give him 30 seconds.

Mr Laughren: But only when Mr Kormos is finished.

Mr Kormos: You talked a little bit about the impact of subsection 231(5), and it is of a little bit of interest to us down in Niagara because one of the leading decisions about the liability of tavern owners, for instance, developed out of a fact situation in the Niagara Peninsula and it is one of your classic law school textbook cases.

I appreciate your mentioning it, but I am not sure that a whole lot of people understand what the history has been and what the impact of that has been. If a tavern owner violates, for instance, the provincial legislation forbidding him or her to serve drunken people and/or puts them out into their cars in a drunken state, are you saying that this legislation absolves that tavern owner from any liability?

Mr Hoch: I cannot say it absolves them entirely from any liability because, as we all know, the courts can rule in a wide variety of ways. The reality is that it substantially reduces their risks and that means that some will and some will not be prudent in how they monitor the consumption of alcohol and who they turn loose on our roads to drive a weapon down the road.

We believe that is a concern. I cannot say 100 per cent that this will eliminate it. We think it substantially reduces that liability.

The Chair: Mr Ferraro may have a point of clarification on that.

Mr Ferraro: I would just like to say that the liability of those serving the liquor is not dispensed with. I am not a lawyer and I will let Mr Endicott add to this, but essentially we had to make this change. Otherwise, you had the server of the liquor paying an inappropriate, proportionately higher degree of the liability that should go to the driver who is impaired. Mr Endicott, can you embellish that a little bit?

Mr Endicott: The thing is that of course with the threshold the liability of the driver is no longer present, and under the joint and several liability rules what that means is that the server of the liquor would be paying the portion that otherwise would have been paid by the driver. In an accident you might find the driver 50 or 60 per cent at fault, actually usually about 75 per cent at fault, and the server 25 per cent at fault. Under the joint and several liability rules, now they would have to pay the full amount.

In order to preserve their liability, the intent is that they still continue to be responsible for the 25 per cent but not the other 75 per cent, which in the current situation they would not in most cases be liable for in any event, because that other person would have insurance. So the intent is as best as possible to preserve the existing relationship with the nonauto drivers.

Mr Kormos: In response to that, it would seem, though, that notwithstanding that, a driver under this scheme would be precluded from suing the tavern owner in any event if he did not meet the threshold.

Mr Endicott: No, that is not correct. The removal of the liability with respect to the threshold only applies to the owner and the operator of the vehicle. So they continue to be able to sue the other potential sources of liability in the accident, as it were.

Mr Kormos: There are others who have comments on that, I know.

Mr Runciman: My colleague has some questions, but first Mr Laughren can go.

Mr Laughren: I have just one brief question. I have always struggled with the dilemma of someone who becomes, for example, a paraplegic or a quadriplegic as a result of an accident versus someone who is that way because of an accident of birth. I wondered whether your association has thought about that and whether

you have taken a position on what I would see as the contradiction in our society of treating people differently because of how they became quadriplegic or whatever. In one case you argue for the right to sue and in the other case there is no right to sue; there is nobody to sue. Society treats the two cases very, very differently and I have never understood why we have allowed that to be the case in our society.

Mr Hoch: Could I ask for clarification? Could you explain what you mean by contradiction?

Mr Laughren: It seems to me that you end up with an accident being just that, the term of what "accident" means, that people become disabled, whereas in another case they are born that way, which is also an accident. Yet in one case your association argues for the right to sue and with a subsequently much higher level of benefits to that person than the state provides for someone who is born by accident with the disability. I have never understood that.

Mr Hoch: I would have to disagree with you, because we argue and we continue to argue and will argue tomorrow and until time eternal that that right to have that equal funding and equal right should be there for all. So I would have to object to that statement.

Mrs Marland: I notice in your letter of 17 November to Mr Elston that you said that you looked forward to the possibility of meeting with him again to discuss your requests for changes. Has that meeting taken place?

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Mr Hoch: No, it has not.

Mrs Marland: Would you still like that opportunity?

Mr Hoch: Of course we would take any opportunity we can to assist the government in providing meaningful legislation, yes.

Mrs Marland: Can I give you an example? I would like to ask you whether you feel that the present legislation would address this example satisfactorily, or is it an example that we should look for an amendment to the legislation in order that this be addressed?

I am talking about a friend who is a quadriplegic who sustained a whiplash injury some three and a half years after the original injury that caused the quadriplegic condition. With a whiplash from being rear-ended in a car accident, my friend now has sustained an injury which on its own may have met a threshold: the threshold, as defined so loosely in this legislation.

Now the fact is that we have an individual who is already a quadriplegic having sustained a spinal injury. In this situation, where this patient's neck was the only thing left and she is now suffering a great deal of pain and obviously some limitation because of that second injury, do you feel that from your experience base through the people that you know through the association, that individual would in all likelihood meet the threshold as you understand it in the present legislation?

Mr Hoch: I would probably have to respond in two parts to that. The first is, you have to recognize that every case, in terms of the people we deal with, is an individual case. Not one of them is like the other one. So I am not sure that I could generalize out of that.

As I see it, the difficulty in the definition is with words such as "serious" and things such as "soft tissue injury," which a whiplash would fall under. Whether pre-existing conditions are taken into account by the courts, I am not sure how I could respond to that. As I read it—I am not a lawyer and I am not a doctor—I do not think that soft tissue injuries will fall within that category, but that is an assumption.

Mrs Marland: Therefore, would it be fair to say that you have a concern, again because of the latitude in the interpretation of the definition as it stands today in the legislation?

Mr Hoch: Nothing can be black and white. We have a concern because it is going to take a lot of time to get to that definition. In the meantime, people can suffer and not necessarily be entitled to anything more than the minimum benefits here, and the courts may still take two to three to four years to rule and the costs incurred in that may or may not be recovered by the individual in a lawsuit. Given that each is so different, I do not think you can legislate it, but I do not think that leaving it as wide open as it is right now is acceptable to us.

Mrs Marland: May I just ask one final question?

The Chair: Quickly.

Mrs Marland: You said something at the beginning of your presentation about when work is done to modify their living accommodation and you talked about showing the bill at the end of it. Is your argument about upfront lump sum payments because of the concern for getting the work done and having to pay for it ahead of time, and then in this present situation having the risk that you may never get compensated for it?

Mr Hoch: Not so much from that point of view. Our concern is that—and I stand to be corrected—I believe that it has to be medically approved in order to receive those moneys. We think that if it is permanent and/or serious, whatever is defined, people should have the right to those moneys to use as they see fit. Right now, it is going to be an insurance company's doctor, some other rehabilitation specialist or a government person telling you how to spend your money. People should have the right to spend that money as they see fit. If they want to spend it on the lottery that is their business, but at least they would have the money.

The Chair: Thank you very much for your presentation.

From the Insurance Brokers Association of Ontario, Terry Taylor.

Mr Kormos: Before that I have a procedural matter, Mr Chairman. I have a motion that is prompted by—

The Chair: I am going to entertain procedural motions after 12 o'clock.

Mr Kormos: This motion is relevant to the proceedings this morning.

The Chair: That is what I am saying, at 12 o'clock, once we have heard from the last group this morning. I think the best way to proceed would be to hear the deponents. That is what we are here for. If we want to, at the end of this morning's presentations, 12:05 or 12:10, whenever it is, I will entertain a procedural motion at that time.

Mr Kormos: The problem is that my motion is relevant to what is happening this morning and it has everything to do with the fact that we are not hearing delegations and parties making submissions. That is why my motion is—

The Chair: I am not prepared to hear it at this time. I have called the Insurance Brokers Association of Ontario, Terry Taylor. They have the floor for the next half hour.

Mr Kormos: Then I tell you that you are wrong.

The Chair: You can challenge the ruling of the chair.

Mr Kormos: You are just prolonging this. You are making this more painful and longer. It is like ripping a bandage off slowly instead of all of a sudden. If you would not interrupt, we would get it done. Indeed, I am challenging the chair. I could challenge it for a number of reasons, but in this instance I am challenging it because I have a motion that deals with a procedural matter that is

relevant to what is happening or, more important, what is not happening this morning.

The motion is—

The Chair: Before you read the motion, the clerk has advised me that in order to challenge the chair you need a majority of the committee to agree with you.

Mr Kormos: No. In order to challenge the chair, I simply say I challenge the chair, and then there is a vote.

The Chair: Shall the chair's ruling stand? All those in favour? Opposed, if any? Defeated.

Mr Taylor, we are yours for half an hour.

INSURANCE BROKERS ASSOCIATION OF ONTARIO

Mr Taylor: I look forward to this. On behalf of the Insurance Brokers Association of Ontario, I want to thank you, Mr Chairman, and your committee for allowing us to be here today.

My name is Terry Taylor and I am the assistant general manager of the association. Accompanying me today is Spurge Near, the president of our association and the proprietor of Spurge Near Insurance Brokers Ltd in Scarborough, Ontario.

Today, I would like to make some comments on the role that the broker plays in Ontario's insurance community, some comments about our association and, finally, some comments about the legislation before you.

The insurance broker acts as the intermediary between the insurance company and the consumer. In a manufacturing analogy, it is the insurance company which manufactures the product, it is the consumer who purchases the product and it is the insurance broker who distributes that product.

A distinction should be made between the insurance broker and the insurance agent. An insurance broker is an independent businessperson representing a number of different insurance companies. The insurance agent, on the other hand, is by law limited to representing only one company and is usually employed by that company.

Thus, a person who deals with an insurance broker is able to choose from the products of a number of different companies and at different prices. The insurance agent is able to offer only the products of one company and one price, thereby severely reducing the choice available to the inquiring consumer.

In the Ontario marketplace, nearly 12,000 insurance brokers distribute about 80 per cent of all property/casualty insurance products. Our association is comprised of over 7,200 members

employed in nearly 1,200 offices throughout the province. Collectively, IBAO members transact nearly two thirds of all of Ontario's insurance business.

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It should be noted also that the design and content of the product does not have an impact on the broker's ability to distribute it. It does not make a difference to the broker whether automobile insurance is pure no-fault, pure tort or a combination of the two, as suggested here. We are here today, therefore, not to promote or to defend the claims of any special interest group other than consumers. The consumer's welfare is our prime concern and, bearing that in mind, I would now like to make some comments about the proposed legislation.

First, let me begin by saying that we are glad to see that the government has finally decided to address the real cause of the problem, and that is claims cost control. All the previous strategies have addressed only the premium side of the issue and have failed to take into account the claims side. Finally, under this legislation, your attention has been properly turned to the root cause of the automobile insurance problems being experienced today by Ontario's consumers.

Throughout the course of these hearings, the people who will appear before you will undoubtedly make suggestions for many changes and/or improvements. Let's face it: Anything can be improved. What should be borne in mind is that any enrichment to the proposed schedule of benefits or any improvement or significant change to what has been proposed will not come without significant extra cost.

Brokers deal with consumers every day, and I can tell you that consumers are extremely price conscious. When all of this is done, consumers hope to see two chief results. They want stability in the marketplace, and they want affordable and readily available insurance coverage.

We have analysed all the facets of the Ontario motorist protection plan. It is our opinion that if the proposed product is introduced in its present form, then consumers will be well served in that it will be reasonably priced, it will provide guaranteed accident benefits to every automobile accident victim and it will provide insurance companies with the claims cost predictability which has been sorely lacking from the Ontario marketplace for several years. Automobile insurance should once again become affordable and available.

There are many positive parts to the proposed legislation which will benefit consumers. Today I want to limit my comments to just a few of them. I expect other comments of others will be made in future meetings we will have.

We are glad to see that the proposed legislation calls for the establishment of an insurance commissioner. It is our hope that this commissioner will be most diligent in his or her regulation of insurance companies in order to prevent the recurrence of reckless price wars and reckless underwriting practices. In fact, these irresponsible actions of a few companies in the early 1980s have resulted in the no-fault era of the 1990s. Strong regulation by a committed insurance commissioner will, we hope, provide long-term stability in the insurance marketplace.

We are also pleased to see that tied selling has been specifically recognized as an unfair trade practice. You should be aware, however, that an insurance company's requirement that a broker have a balanced portfolio is just another form of tied selling. In the worst-case scenario, a broker is required to balance off each automobile application with a personal property application. You can appreciate how difficult that is, since there are far more cars around than there are houses. So that his portfolio can be balanced, the broker is forced by the insurers to engage in tied selling. It is our hope that the implementation of the new automobile policy will relax the very tight marketplace which now exists and will eliminate the tied-selling, balanced-portfolio rules that are now in effect.

It is also our hope that a properly priced insurance product which provides predictability of future losses will also serve to reduce the population of the Facility Association. There are far too many Ontario consumers now insured in the Facility Association who should be rightfully insured in the regular marketplace. These are the people who have driving records that are just slightly less than perfect and who would be accommodated in the regular market if the present product were properly priced and if the tort reforms that our association had previously proposed had been enacted a few years ago.

We also endorse the proposed legislation's call for a speedy payment of claims. I can tell you that a good part of a broker's day is now devoted to handling phone calls from claimants in search of their claims cheques or seeking enlightenment on the necessity of having further forms completed so that their claims can be processed.

Finally, we endorse the proposed legislation's call for a system of first-party benefits. This

means that in the future it will be the quality of service provided by the insurance company's claims department that will be the main determinant on whether or not a company's products should be purchased or endorsed, thereby reducing the importance that price currently plays in the process.

That concludes our remarks, and I am sure we would be happy to try to answer any of your questions.

The Chair: I have Mr Kormos, Mr Runciman, Mr Nixon, all for eight minutes each.

Mr Kormos: My impression is that you are very supportive of the bill.

Mr Taylor: We think it is a good compromise, Mr Kormos.

Mr Kormos: My records show that the Insurance Brokers Association of Ontario pieced off the Liberal Party to the tune of \$2,400 in 1987 and \$3,000 in 1988. Are you aware of those financial contributions to your friends here in the Liberal Party?

Mr Taylor: I do not know if that is relevant, Mr Chairman. We did not write the legislation.

Mr Kormos: I am interested in whether or not you indeed paid the Liberals \$2,400 in 1987 and \$3,000 in 1988.

Mr Near: Yes, we can answer that. Indeed we did. We did the same for the Conservatives as well.

Mr Kormos: I am in good shape, then.

Mr Near: To you, we did not.

Mr Runciman: Did you have to say that?

Mr Kormos: I tell you that we do not expect it.

Mr Ferraro: Did you give the Tories the same amount?

The Chair: Sorry, no interjections.

Mr Taylor: This was a long time ago, Mr Ferraro.

Mr Kormos: Well, 1987 was the election when the Premier (Mr Peterson) promised—

Mr Furlong: A lot more than the labour movement gave you.

Mr Kormos: The labour movement, I tell you, Mr Chairman and all those who listen, makes significant contributions to the New Democratic Party, and I find it sad and pathetic that the Liberal Party would march to the marching orders of the insurance industry. I have no qualms about being responsive to the interests of working people in Ontario—I tell you that right

now—nor do my colleagues in the New Democratic Party.

When you heard the Premier promise back in 1987 that he had a very specific plan to reduce automobile insurance premiums three days before the election in September 1987, surely you people, being involved as thoroughly as you are in the insurance industry, must have had some idea of what he would have had in mind. Can you help us out? Can you enlighten us in that regard? What do you think the Premier had in mind back in 1987 when he said he had a very specific plan to reduce automobile insurance premiums, your being in the insurance industry?

Mr Taylor: We are not privy, unfortunately, to the thought processes of the Premier in an election campaign. What he may have had in mind in 1987, whether it was the Ontario motorist protection plan or not, I do not know. We are here to discuss the plan and the proposed legislation, and we think it is a pretty good deal.

Mr Kormos: I am sure you do. Back in February last year, when the Ontario Automobile Insurance Board announced premium increases of, my goodness, anywhere from 17 per cent to 82 per cent—after that, there was a multimillion-dollar process of hearings and you people participated in those hearings.

Mr Taylor: Yes, we did.

Mr Kormos: Did you believe at that point that that was the plan the Premier had in mind, that he promised back in September 1987?

Mr Taylor: We did not know what the Premier had in mind in 1987. We have to deal with the facts that are presented to us. As we said in our brief today, everything else that has been done prior to now has just addressed one side of the issue, and that is the premium. You are finally now getting down to the root cause of the problem and that is controlling the claims costs.

High premiums result from high claims. If you can reduce claims, you are going to reduce premiums. That is what the Ontario motorist protection plan does. It is going to benefit consumers. It is going to at least stabilize insurance premiums and it is going to provide accident benefit compensation to a whole range of people who heretofore were not privy to that.

1050

Mr Kormos: I told this committee on Monday that my estimation of the windfall for the auto insurance industry in Ontario was going to be some \$630 million. Other people had estimates that were in the range of \$700 million and change. Was I low, or is indeed the lower figure

of a mere \$630 million more accurate than the \$700 million and change?

Mr Taylor: Your wording is wrong. It is not a windfall; it is just premium that companies are not going to have to collect because they are changing the system.

Mr Kormos: What that means is that companies are going to be paying out far less under this new regime than they have previously, are they not?

Mr Taylor: I suspect that companies will probably be paying out just what they are paying out now. I think that is the intent of the system, that the money is going to be diverted back to the people who need it, and those are the victims and not the lawyers.

Mr Kormos: Will this not be the most publicly subsidized system in all of North America, in view of the fact that—

Mr Taylor: I do not think it will be as much publicly subsidized as Manitoba's.

Mr Kormos: Tell us about Manitoba.

Mr Taylor: I am sure some of your former colleagues there would be great to tell about that.

Mr Kormos: Tell us about the subsidies.

Mr Taylor: There are a lot of them, and I think if you go back into the history that led up to the 1988 Manitoba election, you will find out exactly how much of a subsidy they needed.

Mr Kormos: Name a subsidy.

Mr Velshi: I do not think it is correct, Mr Chairman, debating with people who have come to give advice.

The Chair: On the interjection from Mr Velshi, as I said yesterday, witnesses are over 21. I think the witness can respond to either the questions or the theatrics of Mr Kormos or any member of the committee in any way they wish. Mr Kormos, you have another three and a half minutes.

Mr Kormos: Name a subsidy.

Mr Taylor: There was the premium tax they put in on the gasoline to get the thing going; there are the indirect subsidies of providing government buildings; there are all sorts of subsidies built into the system, Mr Kormos. It simply does not work.

Mr Kormos: You guys do that time after time. Indeed, you spent almost \$1 million of insured persons' premiums in your campaign in British Columbia to attack the Insurance Corp of British Columbia, the public nonprofit program in BC. It was a campaign that was abandoned before it

reached its peak because it was demonstrated to be unsuccessful. You and your machinery have spent a whole lot of drivers' money, insured persons' money in this province and throughout Canada criticizing systems that are being maintained by governments like the Social Credit in British Columbia, among the most right wing of governments that this country has ever seen.

It is incredible that you would come here and so boldly talk about subsidies, yet not be able to specify existing subsidies. When I am telling you that what you are generating with this legislation in Ontario is a system that is going to be subsidized with \$95 million worth of taxpayers' money, when you take into consideration the elimination of the three per cent premium tax, I want you to tell me how the elimination of that three per cent premium tax is fair, when that \$95-million expense, that cost, is going to be passed on to taxpayers throughout Ontario.

Mr Taylor: Is that a question?

Mr Kormos: You got it.

Mr Taylor: I see. I guess if I had known I was going to be asked about the mechanisms in other provinces and other automobile insurance schemes, I would be prepared to answer it. Unfortunately, I am not.

I find it interesting, though, that it has taken eastern Europeans nearly 50 years to figure out that government-run industries do not work. I wonder what the eastern Europeans know that the New Democratic Party does not know.

Mr Kormos: That is the same sort of stupid comment that was made by your friends from the American-based insurance company yesterday. The best thing I can tell you is that when I spoke this summer to a group of actuarial types at some fancy hotel downtown—and I thank them for the dinner they gave me—the temperature dropped a few degrees when I walked in there, but so be it. I was waiting for my coat in the lineup, and these guys were not happy campers at all, and I heard one mutter to the other and he said, "Damn it, if we'd only listened to Mel 10 years ago we wouldn't be in this shit now."

Mr Near: There is enough of it flying now.

Mr Kormos: Of course, they were making reference to Mel Swart and the criticisms that he has made of the auto insurance industry.

You guys have gouged and gouged and gouged. You have picked pockets, you have mugged young people, old people and victims.

The Chair: Mr Kormos, your time has expired.

Mr Kormos: I tell you, do not cry the blues when it turns on you and when your number comes up, because your number is coming up soon. The public will not take it any more; I tell you that.

Mr Runciman: I must say that I am a little surprised at this submission today. I have certainly known the brokers in my role as critic for the Ministry of Financial Institutions for a number of years, and I have certainly heard some concerns about the whole concept of no-fault. We are not seeing any of those mentioned here today in this submission. I know the past president of the brokers' association publicly expressed concern not too long ago about cherry-picking and the fact that we are going to see that sort of thing occurring in the industry, where the insurance companies are going to find people who do have protection in terms of income replacement much more attractive because they pose less risk. That is one. I will not mention a number of them here.

Why are you not relating those kinds of concerns about this legislation, which I know your members are feeling? I am getting that kind of feedback. Why are you not expressing them today?

Mr Near: We have related those concerns on things like that to the ministry. I think the reason we are not doing that today is that the present system has created a problem where there is no insurance available in the market, especially in metropolitan areas of the province. This plan will at least bring it in. We maybe should have brought forth to the ministry such things as you have just brought to our attention, that the \$450 maybe should be a little higher and the payment of it should be primary instead of secondary, but we realize, as we have said in our brief, that each one of these things would significantly increase the cost of the insurance. So these improvements could be made. We have said also in our submission that this plan is not perfect, but let us start with something. It has to be better than what we have.

Mr Runciman: To be helpful to the committee, some of the concerns I have heard are not going to have an impact on cost, in my view. Some sort of watchdog effort over the cherry-picking element is certainly not something I see as having any kind of significant impact on cost.

What about the fault chart? I have heard members of your association expressing concern about assessment of fault and what is going to happen in that regard. Do you have the answers to those questions?

Mr Near: We have 1,200 independent offices. As an association, we are bound to have a couple who do not agree with the association's view. However, the fault chart, we feel, will prevent the careless driver from feeling that he has nothing to lose so he might as well be careless and be a careless driver. Because of the fault chart, my understanding is that this new bill would provide the insurance company the ability to charge those who caused the accidents higher premiums and thus give them a penalty for being bad drivers. So I would say that on the whole, most brokers would be in favour of a fault system that penalizes the careless drivers.

Mr Runciman: Then we get into the question of adjudication on that, and appeal.

How do you see this working in terms of brokers' roles and acting in the victim's interest? Who is going to be guiding these victims through this myriad of regulations? How do you see the brokers' role in all this?

Mr Near: The brokers have done it for years in the old system and we are quite prepared to do it under the new system.

Mr Runciman: Have you no concerns at all about this?

Mr Near: Our prime concern is our clients' welfare, and if that is what it takes, we will do it.

Mr Taylor: The new system, I think, is going to be easier for the victims to work within. The payments are going to be made a lot quicker. There are substantial penalties in place for companies that dilly around. The onus is on the companies to produce and show the faith they have placed in their product. I think claimants will be well served by the new system because of the regulatory control.

Mr Runciman: In your second-last paragraph about company performance and price not playing the role that perhaps they played in the past, are you suggesting there is going to be a marked decrease in competitiveness in terms of various pricing formulas that are around?

Mr Taylor: Not at all. I think the competition in the future is going to be how well the claims departments perform when claims are presented for payment. You are going to be dealing with your own customers in the future, and as in any other area of trade and commerce now, if you are not treated properly as a customer, you are not likely to repeat your purchase. I think the competition is going to be not only in price, as it has been in the past, but it is going to be in quality of service.

1100

Mr Runciman: How did your association react to the insurance industry's smart no-fault concept that it came out with after Slater, I guess it was? Are you generally supportive of smart no-fault?

Mr Near: Prior to that we advocated tort reforms. Our position has been tort reforms. If they were not coming along, then we would support no-fault. So yes, we do support the smart no-fault.

Mr Runciman: You did support smart no-fault.

Mr Near: We would rather have had tort reforms, which we did not get.

Mr Runciman: How do you feel about the elimination of psychological injury or illness from the threshold in this legislation? That was not eliminated in the smart no-fault. There was no proposal to eliminate that in the smart no-fault proposal. How do you feel about that now? Have you changed your mind?

Mr Taylor: I think what we have before us is a piece of legislation that has been developed to try to balance off a number of competing circumstances. It does not mean to say that it cannot be looked at in the future. It does not mean to say that what we have now is cast in stone and will never be amended in the future. What we have right now is a good workable plan to get Ontario's insurance marketplace back into sync.

There are some shortcomings in it and we have alluded to that in the brief. There are changes that could be made and perhaps in time should be made. That does not mean to say we are entirely happy with it, but we think it is a good compromise and is something we need now to get Ontario consumers back to getting the type of insurance at a price they can afford.

Mr Runciman: I would not use the word "alluded." I would use the word "avoided." If you have those concerns, you certainly have not incorporated them in this submission. Are you saying you agree? Is it the position of your association that you agree with the government's decision to eliminate psychological injury from the threshold? Is that what you are saying? Is that the position of the Insurance Brokers Association of Ontario?

Mr Taylor: If I can speak for my president, I think what we are saying is that what you have before you, we feel—

Mr Runciman: You are not answering my question, Mr Taylor.

Mr Taylor: I do not think we are—

Mr Runciman: I think these are very significant elements. There is widespread concern across this province, certainly about this particular omission from this legislation. We have heard from a number of witnesses who appeared before us to express concern about this. I think it is incumbent upon you as an association that comes here today and is essentially rubber-stamping this thing, which gives me a great deal of concern—I know from talking to your members across the province that there are some concerns about this legislation and they are not being voiced here today. I want a specific answer from you. Do you agree with that elimination, that omission?

Mr Near: We only had half an hour.

Mr Taylor: We are here representing our members and our members are telling us that they are having a very difficult time serving the consumers of this province and finding them easily affordable and readily available insurance coverage. We are here representing them, saying that this proposal, if it is implemented in the way it has been presented to you, should result in having readily available, easily affordable insurance available again to the consumers of this province. That is what our members want. That is what the consumers want.

The Chair: May I interrupt at this particular time?

Mr Runciman: My time is up?

The Chair: Yes. Mr Nixon and Ms Oddie Munro for eight minutes.

Mr J. B. Nixon: Just a couple of questions: We have heard concerns relating to the maximum level of wage-loss compensation, the \$450 level. It is certainly my understanding that this legislation will require insurance companies to offer additional wage-loss protection. I assume the brokers will be marketing that. A lot of people suggest to me, "Yes, but the consumer will not know anything about that." Do you have any comments on that suggestion?

Mr Taylor: We think there could be a very serious errors and omissions problem on our part if we do not make our clients aware of the fact that additional coverage is available to them. Second, particularly if they make over \$29,000 a year, it is our responsibility to counsel them to make sure what options they have available and how other forms of salary continuation plans interrelate to what has been proposed in the legislation. Our members are going to be advised to identify their clients who may fall into that category of over \$29,000 a year, and if they do to

help them analyse what additional coverage they might need.

Mr J. B. Nixon: The second question has to do with the move to a first-party benefits system. You make a brief comment on that issue in your brief. To help some of us, can you explain what a first-party benefits system is and its impact on the consumer.

Mr Taylor: It is quite simple: You deal with your own insurance company. You have all heard stories, I am sure, where a car is stuck in a body shop and is not getting fixed because the other guy's insurance company has not okayed the repairs, or you are waiting for a claims check from the other guy's insurance company and it has not shown up yet. What can you do? It is not your insurance company's fault. It is like fighting city hall. But now, with a first-party system, you are dealing with your insurance company.

Mr J. B. Nixon: A lot of people say that dealing with your own insurance company will be no better than dealing with the other guy's insurance company.

Mr Near: That is incorrect. If you are dealing with your own insurance company the broker is a customer of that insurance company. If it wants any more business from that broker, it is going to listen to the broker. There is more pressure the broker can give to his own insurance company than he can to a company he does not deal with.

Mr Taylor: A broker is not going to represent a company that does not provide a high level or high quality of service, nor will his customers accept a renewal from a company with which they have had problems in the past in getting a claim settled.

Mr J. B. Nixon: Do you see the Ontario motorist protection plan as changing the market somewhat, so that increasingly companies will be selected by consumers for their insurance based upon their service record and their—

Mr Taylor: As it has been in the past, I think a lot of consumers will rely upon their broker's recommendation as to which company they should place their business with. The companies will have to ensure their future support from brokers by upgrading and maintaining a high level of service from the claims settlement area.

Ms Oddie Munro: I would like to ask a few questions about the Facility Association. Coming into Toronto today, I was listening to an open-line show out of Hamilton and some of the consumers calling in were concerned about the last resource aspect of the Facility Association. In their minds it constituted a refusal to cover by

brokers, agents or whoever provides the policies.

You indicate that if the product is properly priced, then a segment of those people who, in their terms, may be discriminated against by being placed in the Facility Association will transfer over. I am thinking about people who perhaps are driving a high-cost car, do not have a five-year driving record, are teenage drivers, and I think even gender is a factor. I wonder how in your opinion that burden will be transferred, or why in the first place the brokers were not able to provide that category of client with the kind of service he needs.

I wonder whether you could provide me with some figures in terms of numbers. I know it is difficult, but perhaps you could provide me with an indication of how many, what the population is we are talking about that could be transferred over quickly if price were the issue.

Mr Taylor: I may not be able to supply you with accurate figures, but I could address your question in a scenario. If you are dealing, as we currently are, with a marketplace where the product is underpriced, where you are not getting enough premium regardless of the type of risk that is presented, then an insurance company is not going to accept a risk unless it feels it is the least likely chance of causing it a loss.

If you can eliminate from your books the people you think are going to cause you losses—if you are going to deal in an underpriced situation, then the people on your books should be the best there are. If you have any sort of blemish against you and there is an underpriced product situation, the insurance company is going to say, "We don't want you." The only alternative many people now have is to go to the Facility Association.

What we are saying in our brief and what we think is going to result is that the new product will be adequately or properly priced to represent the risks of many people who are now in Facility. You mentioned people who may not have a perfect driving record, who might have one or two speeding convictions or who might have a high-priced car, any of those things that are not really significant when you are getting a proper price but that take on a special significance when you do not get a proper price. Once you can get a proper price for that risk, then the regular market will accept them.

As to how many thousands of people there are like that, Ms Oddie Munro, I cannot give you an answer. My guess is that the Facility Association has gone from three per cent of the population to about 10 per cent and I would suspect that a good

portion of that 7 per cent should be in the regular marketplace.

1110

Ms Oddie Munro: A final question: Bill 68 stands in relation to a number of other measures that the government has initiated, including measures by the Attorney General (Mr Scott), the Solicitor General (Mr Offer) and the Minister of Transportation (Mr Wrye). I wonder to what extent you feel those measures will clear out some of the high-risk people who are currently in the Facility Association.

They are placed there because they obviously are high-risk. How can we give them better education and training to prevent making them a statistic. Do you feel that the measures we are taking outside of Bill 68 will go a long way to do that kind of preventive work? We obviously have moved in good faith, feeling that is the issue. Some members of the opposition have asked questions on more stringent measures, for example, on driver training and licensing.

Mr Taylor: My assessment of the other measures, as you refer to them, is accident deterrence and prevention. The chronically bad driver is going to be immune to any sort of counselling and you are always going to have the bad driver.

What I think you are hoping to accomplish by some of the other measures is to reach out to those people who are not yet quite there as chronically bad drivers to try to impress upon them that they are going to have to be more responsible or they will have a tripling of their speeding fines, that they are going to have to take mandatory rehabilitation if they are chronic drunks, that they are going to have to recognize there are now an extra 115 police officers on the highway trying to catch them.

It is accident prevention, accident deterrence. I am not too sure you are ever going to be able to do much for the chronically bad driver, and that is why the Facility was created.

The Chair: I am going to have to intervene there and say thank you very much for your very thought-provoking presentation and the discussion that followed.

From the Advocacy Resource Centre for the Handicapped we have Mr Beatty and I believe two other gentlemen as well. Would you make your way to the front table, please.

Mr Kormos: On a point of order, Mr Chairman: I note the subtitle of the brief from the Advocacy Resource Centre for the Handicapped reads "How the Ontario Government Subsidized

the Insurance Industry by Cutting Compensation for Disabled People." It is an interesting title and it conflicts directly with what the Insurance Brokers Association of Ontario people had to say. Somebody is lying here and I do not think it is ARCH.

The Chair: Mr Beatty, welcome to the committee. You have one half-hour of our time. I suggest that if you could try and keep the presentation to about 15 minutes, that would allow us 15 minutes for comments and/or discussion. Would you introduce the two gentlemen you have with you.

ADVOCACY RESOURCE CENTRE FOR THE HANDICAPPED

Mr Beatty: David Baker on my far left is the executive director of ARCH. Ronald McInnes on my immediate left is a member of our board of directors. He is a lawyer in private practice in Toronto and is past president of the Ontario Advisory Council for Disabled Persons. Ron will start with the first comment.

Mr McInnes: I would just first like to mention for the benefit of anyone else in the room that there are extra copies on the table of the presentation that has been given to the committee for anyone who would like to have a chance to look at it while the presentation is being made.

As Harry Beatty mentioned, I am one of the board members of the Advocacy Resource Centre for the Handicapped or ARCH as it is usually referred to. For those of you who are not familiar with it ARCH is a nonprofit community legal clinic. It was founded in 1980 and has been active since then in advancing the legal rights of citizens with disabilities through litigation, legal education and law reform activities.

ARCH itself is governed by a board of directors that is drawn from the 38 consumer and voluntary organizations which make up its membership. There is a brochure with the material you have setting out further information on ARCH and the membership.

I think it is very important to make the point that ARCH is not involved in motor vehicle litigation. However, both ARCH and its member organizations serve people who have been disabled in automobile accidents. Because of the importance of the automobile insurance debate in Ontario to the adequacy of the compensation that disabled persons receive, ARCH has actively been involved in this debate.

ARCH submitted a brief to the Ontario Task Force on Insurance, chaired by Dr Slater. Harry Beatty was a member of the advisory committee

to the Inquiry into Motor Vehicle Accident Compensation in Ontario, chaired by Mr Justice Osborne. ARCH was a party at the reference hearings into no-fault proposals conducted by the Ontario Automobile Insurance Board in the summer of 1989, has attended most of the proceedings and made an extensive final submission. ARCH has accordingly had a good opportunity to understand how proposed changes to automobile insurance will affect those disabled in motor vehicle accidents.

Throughout the course of the public reviews of automobile insurance in Ontario, ARCH has developed its own independent analysis and position. I would like to make it very clear that ARCH has not affiliated itself with any group representing the interests of lawyers or insurers.

Just before going further I would like to interject what is more or less a personal note. It is my feeling that automobile accidents in Ontario, or in any province or any place for that matter, with as many automobiles as we have in this province are really a part of life in Ontario. There may be ways that we can reduce some of them, but by and large we are always going to have them.

In that context, in the context in which we look at the automobile accident, fault is often a very hazy concept. I probably do not need to remind you that in a litigation case the onus is on the plaintiff to prove fault, but many accidents occur because of momentary inattention by one driver or another. The fact that any one of us gets through a day, especially in Toronto, without an accident may be more by good luck than good management, considering that we are human.

Anyway, to return to our presentation, and I think that is relevant to it, ARCH has carefully reviewed the various alternatives that I have spoken of before and that Harry especially has been very involved in, and has come to the conclusion that a threshold system does represent the best overall approach to the automobile insurance issues that have arisen in Ontario. This preserves the right to sue in the most serious or catastrophic cases, while limiting the legal and adjusting expenses associated with the smaller claims.

While no system is perfect, and we certainly recognize there will be injured persons who will lose significantly under the threshold, on balance we have concluded that it best protects the interests of those most seriously injured. In this connection we note, as will be discussed in more detail later, that many not-at-fault persons as well as at-fault drivers and other injured persons will

benefit from the introduction of the threshold scheme.

Having said that, however, ARCH does not view the Ontario motorist protection plan as adequate to meet the needs of accident victims because of inadequacies in the no-fault accident benefits package. This package has been cut back significantly from the system proposed by Mr Justice Osborne and referred to the Ontario Automobile Insurance Board by the government.

No-fault accident benefits at least as good as those initially proposed, and perhaps even better, are, in the opinion of ARCH, affordable given the extensive subsidies given to insurers so far by the government. We hope to demonstrate this morning that the public hearings into no-fault conducted by the OAIB and the report of the OAIB show that significant improvements over the present package are affordable.

In this submission, we shall outline the necessity for better no-fault accident benefits and show how these are affordable within an improved Ontario motorist protection plan.

Having given that introduction, I would now like to turn it over to Harry Beatty to deal with some further points.

1120

Mr Beatty: I do not think anyone who has taken part in this debate has seriously questioned that the no-fault accident benefits in the current plan are totally inadequate. They were a progressive advance when introduced in 1978, but the whole package has been improved not in the least, and in 1990 is still at the 1978 levels.

Mr Justice Osborne in his report said that a significant package of improvements could be made without even having a tort restriction, as long as there was tort reform and court reform; that the third-party offset just arising from the fact that people would not have to sue as much any more would pay for it without a tort restriction at all.

The government never formally responded to Mr Justice Osborne's report and never presented evidence to the public to show this was correct, but it was clear by implication that it had rejected his approach when the reference to the OAIB was announced last year, because what was referred were two threshold systems—threshold option one, which is the Michigan system most similar to the OMPP, and a New York threshold system—and the choice system.

Turn to page 5 of our brief. The OAIB conducted extensive public hearings at which two full actuarial analyses and a lot of other evidence were presented and were subjected to

careful scrutiny. After an extended hearing, the OAIB found that for all the no-fault options, "the savings and enriched no-fault benefits...are paid for, in large measure, by a reduction in the overall level of benefits currently available to injured persons who are not at fault," and that of the \$105 premium saving in the initial estimate by Tillinghast, the board actuaries, approximately two thirds was coming out of overall compensation and only one third from the efficiency savings in legal and adjustment costs.

If you turn to page 7 we have a bar graph which sets out the Tillinghast analysis. The dollars are expressed there in dollars per vehicle, and in each case the bar on the left is the current system and the bar on the right is threshold option A, basically a Michigan-style threshold. In the first column you see that liability excluding property damage, basically third-party liability, is cut in half from about \$357 a car to \$178, according to Tillinghast, while the accident or no-fault benefits would go up from \$47 to \$121. But the overall saving of \$105 is still a cut in compensation—not all of it, because the no-fault accident benefits are somewhat more efficient, but certainly the major proportion of it. Accordingly, the OAIB said—going back to page 5—that the Michigan-style system imposed "a significant limitation on the existing rights of injured persons." The OAIB clearly indicated that if the government went this route, the proposed package should be enhanced.

The OAIB also stressed that one feature of the Michigan system is that medical and rehabilitation benefits are unlimited. When we saw the OMPP package, however—going to page 8—we were disappointed to see that rather than enhancing the Michigan system, the OMPP represented a cutback. First of all, the wording of the threshold was higher, and we are part of the same informal mental health coalition that presented yesterday. We object specifically to the discriminatory nature of the threshold.

As well, the government has taken away the right to sue for economic loss below the threshold. So it is a more restrictive threshold system than in Michigan, but as well, in bringing in the OMPP, the government cut back the referred no-fault accident benefits package in two significant ways. A monthly limit of \$1,500 was introduced for long-term care; that had not been recommended by Mr Justice Osborne, nor was it part of the package referred to the OAIB. Also, the indexation, which had been capped at two times in the referred system, was removed altogether.

Accordingly, it is our submission that the premium savings achieved under the OMPP are at the expense of persons injured in motor vehicle accidents.

On page 9 in paragraph 22, according to the best information available to us, and we do not have a government financial or actuarial analysis of the OMPP to work on, we have summarized the subsidies. We believe the Tillinghast estimate of \$105 per car in savings in the compensation area is now greater because of the changes that have been made.

It would be our best estimate that there are subsidies and cost reductions due to the OMPP of over \$200 a car or approximately 25 per cent-plus to the insurance industry. We believe that this is out of balance, that while a reallocation from tort liability to no-fault accident benefits makes sense, on the bottom line there is 14 per cent-plus being taken away from the actual dollars that the whole class of injured people is getting.

With that, I will turn to David to express some of our specific concerns in more detail.

Mr Baker: We are very constrained by the time available to us and there is a great deal of material in the brief, but basically we will summarize our points.

First, we are not disgruntled lawyers, and we are critical of the government plan. Second, in our opinion, there is money available to reinstitute a number of the cuts that were made from the plan referred to the OAIB, and if there is to be a benefit of the doubt given, in light of the fact that the government has not produced actuarial data to contradict the information we are presenting—which are not our data; they were produced for the OAIB—we feel that the benefit of the doubt should be given to people who are disabled in accidents, not to the insurance industry.

Essentially, there are four points we wish to have the government re-examine. First, the arbitrary \$1,500-a-month limit on long-term care would provide, in 1990 dollars, about three to four hours per day of care. That is a very minimal level of care, and it would be eroded over the passage of time due to the fact that there is no indexation of this under the proposed package.

The result, in our opinion, will be an increased institutionalization of disabled people over and above the current system, and so an increased dependence upon government-funded institutional care, which is not acceptable, because of the costs of the institutional care; nor is it acceptable to disabled people who are seeking to be independent and to live independent lives. It runs contrary entirely to all the policy explana-

tions given by the government about favouring deinstitutionalization and moving people out of institutions.

The figure was pulled out of the air. Mr Elston, when we asked him, indicated that it in some way reflected the costs of institutional care. At best, in our opinion, it represents 50 per cent of the cost of the cheapest institutional care. If we are talking about producing institutional care at this cost, we are talking about custodial care at best—care that in no way would meet the needs of disabled people. We are terribly upset to see this introduced in the government package. It was not there in any of your earlier proposals.

Second, we find unacceptable the idea that the benefits are not indexed for inflation. As Harry has mentioned, in 1978 no-faults were introduced, but 12 years have passed and the result is that these benefits are totally inadequate. The whole plan here seems to be based on the assumption that no adjustments would be made for inflation in coming years, and this we find unacceptable. Even if the no-fault benefits meet the needs of people immediately, this plan is projected on the idea that this year, next year or the year after that, people will find that they are no longer able to meet their needs and will be forced into institutions, forced on to welfare. This is not acceptable, in our opinion, and it needs to be addressed.

1130

Third, as Harry has mentioned, we are a member of the mental health coalition. We find it discriminatory that the government has chosen to cut back from the very restrictive Michigan standard, from the standard that was referred to the OAIB and in singling out persons who suffer psychological or emotional trauma as a result of accidents. We do not believe we are talking about a large group of people, but in our opinion there is absolutely no justification for introducing this distinction and it will not stand up in the courts anyway. It is discriminatory.

Finally, we are concerned that the government bill repeals a section in the old auto insurance legislation, section 33, which protected disabled drivers against discrimination in auto insurance premiums. These are people who are disabled, who are seeking to be independent, to live independent lives, and who depend upon the use of their vehicles.

ARCH has received a number of complaints from disabled people that, for totally arbitrary reasons—that is, the fact of their disabilities—they are being cut off benefits. In the package you will see a newspaper report from the Niagara Falls

Review of last Friday, in which an ARCH client was compensated substantially by an insurer for the discrimination he suffered.

Not all people are going to be successful. We know the problems with the Ontario Human Rights Commission. In our experience we are seeing disabled people who are having to sell their vehicles because they are dropped into the Facility Association with no accidents, no blemishes on their records, nothing else being a factor other than the fact that they are disabled drivers. When we spoke to Mr Elston, he indicated that there would be protection included for disabled drivers in the government package. We do not see it in this package and we request that it be included.

The Chair: Thank you very much for your presentation. I have Mr Laughren, Mr Kormos, Mr Nixon, Ms Oddie Munro and Mr Sterling. Four minutes. Who wants to start?

Mr Laughren: My question, I think, is to Mr McInnes, because of the comments he made almost as an aside at the beginning of his remarks. It has to do with the fact that you indicated that you understand how an accident can be just that; it could be a slippery road or the inattention of one driver or another, as you have indicated. I wonder, has your organization ever thought about whether it would be acceptable to you if there were no-fault, if the no-fault benefits were substantially increased, or are you firmly entrenched in the tort concept?

Mr Baker: Maybe I could address that. I think the problem, as we see it, is that ideally we would like to move to a no-fault scheme but not the kind of no-fault scheme that the insurance industry would propose, which would slash benefits. Our concern is that in the current environment it does not appear possible to develop an adequate no-fault scheme. In the long term, we would like to go in that direction, as I know your party would.

Mr Laughren: Thank you. Just in conclusion, I appreciated the part of your brief on the subsidy section. I had not seen those particular numbers before and I appreciated that.

Mr Kormos: I am going to ask a little bit about the subsidies. I guess this is addressed more to the parliamentary assistant. These people have done an awful lot of work with what has been available to them in providing an understanding of, for instance, the extent of subsidization by taxpayers and by victims, really. Gosh, the insurance industry is being subsidized by taxpayers and, more pathetically, by victims.

How come the government has not made available an actuarial analysis of this new program so that people like these, who are prepared to work with those figures, can do so? Why have you not made that available? Surely to God the government has done that; it could not have ventured into this blind and solely at the direction of the insurance industry. Why are those actuarial figures not available?

Mr Laughren: Good question.

Mr Ferraro: Without commenting on the editorial aspect of the remarks of my friend from the New Democratic Party, suffice it to say that the government does have a plethora of information, and delegations made presentations to the government. Some of the information is being analysed now. Quite frankly, I suspect that much of the information will be made available as soon as the ministry is finished with it.

If I can just enhance that a little bit, and I do not mean this in a patronizing way whatsoever, ARCH has been a tremendous support to the government in determining the final insurance product, particularly in regard to what is from your perspective the gross undersubsidization from the \$1,500 and your recommendation that it should be more appropriately \$2,730. We are extremely sensitive to that, and I can only tell you that very serious consideration is being given by the minister and the government to dealing with that prior to the passage of the bill.

Mr Beatty: If I could just respond briefly, a point that is not in our brief but I think is worth considering is that if there are inadequacies in this package, as we believe there are, the courts will see them the same as we do and, in an effort to rectify them, will put more cases through the threshold. So it is a false saving in terms of the overall strategy to put in these limitations on the no-faults which ought not to be there.

Mr Ferraro: If I could just conclude, I do not think we can really argue with much of what is being said. The problem, however, is that there is a balance between cost and the level of benefits at this juncture. As you recognized, it is a new venture, and hopefully over time many of the benefit levels will be raised. Certainly I think we all would agree with that.

The Chair: Mr Sola, Mr Nixon and Ms Oddie Munro, all for about a minute each.

Mr Sola: I just have one question. In the conclusions and recommendations section of your final submission to the OAIB, you came to the conclusion that both of the threshold no-fault proposals should be rejected in their present

form, and you referred to both the Michigan and New York models. Yet in your executive summary today I read that you are agreeing that a threshold system along the lines of what exists in Michigan is the fairest way to go. What made you change your mind? Did you have certain studies?

Mr Beatty: Since we made our final submission to the OAIB, we had the analysis of the OAIB, which was the most comprehensive public review. Very briefly, we reassessed and thought that in light of all the considerations and the way they had been weighed, there was no realistic alternative to going with the threshold. We retain our concerns about the Michigan-style threshold; there certainly are some seriously injured people who are going to lose their tort rights and are going to be hurt, but given the sort of politically feasible options, once the OAIB had set out all the considerations, we thought this was the best available.

Mr Baker: I would like to just add to that. Our options are not that great. We are not happy. There are tough decisions that have to be made. Surely the government feels the same way, that there are tough decisions that have to be made. But based on our analysis, and we are focusing in on a package that is cut back from the OAIB package, so it is even worse than what we were having difficulty with back then, we have not seen any figures that do justify the extent of the cuts that have been made in the package.

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Ms Oddie Munro: I think it is extremely important that you and your colleagues, including the Ontario Psychological Association and the Canadian Mental Health Association, are expressing your concerns and wanting more information on definitions of psychological and emotional trauma.

The minister and the parliamentary assistant have indicated that in fact there will be extensions to the no-fault benefits for psychiatric rehabilitation and that indeed victims will be able to sue. I am going to ask specifically: You consistently mention physical manifestation, but included in that is the physiological manifestation, and I am wondering if you can indicate to me whether or not a physiological examination would include—it should—any indication of trauma, psychological impairment or stress factors.

In so doing, maybe you could define for me a working definition of what you understand a physiological explanation would be in this evaluation of the right to sue and the right to receive compensation from that in the no-fault benefits, because I think, in my mind, that it is

something you have not referred to. You have focused mostly on the physical aspect and I am wondering if that might be worth, now and in the future, some other research on your part and on our part.

The Chair: If you would like to get back to the committee before the end of the deliberations, you could send it to the clerk in terms of some of the questions that Ms Oddie Munro posed to you, if you just want to briefly respond now.

Mr Beatty: There is more information as to our position in that area in appendix C of our brief, which is an opinion done by psychologist David Corey for us that relates our concerns to his clinical experience with chronic pain syndrome, post-traumatic stress disorder and so on.

Mr Sterling: I am really amazed in terms of the dollars and cents as to how much those who are not at fault in an automobile accident and are receiving benefits under our present system are really going to be cut down in total figures. They are going to receive about half of what they do now under the present system. It is a dollars and cents problem in a lot of ways—the whole auto insurance thing.

I was also amazed, and I guess it was there before, that when I look at the bar graphs which you present in your excellent presentation, about one quarter of the \$105 the insurance companies formerly paid out in total personal injury claims and in total accident benefits can be related to legal costs. When you look at it in those terms, you wonder whether or not dumping the present system is worth it. Is it worth \$35 a car to not have the determination of who is and who is not at fault and to cut back 50 per cent of what a person who is not at fault is presently receiving under the system?

Mr Baker: I think the number one difficulty is that maintaining the status quo, as we say in the summary, does not appear to be sustainable. We do not believe that it is sustainable. That means we have to make some unhappy decisions. The plan, as the bar graph shows, that was referred to the OAIB, which in substance we could accept as a necessary compromise, results in that 25 per cent reduction in total payouts.

You could make pretty cheap insurance, could you not, if you just gave people nothing? You could make it affordable.

Mr Laughren: That is what we have never understood.

Mr Baker: What I hear Mr Ferraro saying is that we are making good points. We are focusing in on trying to come up with some rational

solution to this problem of affordability, one, without doing it entirely at the expense of people who are disabled in automobile accidents and, two, so that this is not a windfall to the insurance industry.

Basically, where we differ with the government in terms of approach is that the net result of the benefit package is not as much as can be sustained within a range of affordable premiums.

We do not like the idea of a threshold. We wish that Justice Osborne's figures could be sustained, but it would appear that there is some difficulty in substantiating his position. If adjustments need to be made, we think the threshold is, on balance, the fairest way of going. We just cannot believe that the government has to make all the cuts from what was referred to the Ontario Automobile Insurance Board, plus put in all the other subsidies and make the insurance protection secondary, and we have not seen that costed out.

We have done the best we can with what is available to us. We are sure the government must have more and we have not seen what the government has—

Mr Runciman: Don't bet on it.

Mr Baker: —and we encourage you to keep pushing until you see it, because we think there must be something wrong somewhere—

Mr Runciman: Flying by the seat of their pants.

Mr Baker: —because it does not balance out in the end.

The Chair: I am going to have to call time there.

Mr Sterling: Could I just say one more thing?

The Chair: Briefly.

Mr Sterling: One of the great concerns I have about the new system is that members of the public will not have explained to them the injustices that are coming down upon them, whether or not they can go to a court, whether they will face a new premium increase or whatever.

Surprisingly enough, in the constituency that I represent I get relatively few concerns about the premium costs of auto insurance. I get a lot of concerns about how the system comes down on them, whether they are cut off from insurance, whether there is a substantial premium increase without explanation or whatever. My concern about the new system is that it is going to lead to more of that, with fewer appeal mechanisms. I would imagine, when you get somebody who is not going to meet that threshold, that is going to be the most critical case.

Mr Baker: We share those concerns, but as we say, there seems to be limited room for movement.

The Chair: Gentlemen, thank you for your presentation.

From the Royal Insurance Company of Canada, Roy Elms. You have half an hour. I would suggest you could use 15 minutes of that to go through your presentation and allow 15 minutes for some questions, discussion and dialogue. Whoever is going to be making the presentation, could you introduce the other individuals in your group.

ROYAL INSURANCE CO OF CANADA

Mr Elms: Thank you for giving us this opportunity to appear before the standing committee on general government. I would like to introduce my colleagues. On my right is Terry Boyle, our director of claims. As we have already heard today, the claims delivery is going to be an important part of the new process. On my left is Judy Maddocks, who is the manager of Royal's Ontario personal lines insurance operation, our largest regional office in Canada and the one which administers our very considerable involvement in the Ontario personal automobile business.

Let me begin by telling the committee why we asked to be present at the hearing. First, we are here, of course, because we are a large part of Ontario's car insurance system. We provide insurance products and quality insurance service, certainly we believe, at a fair price.

We are also here because we do see the prospect of providing a better product at a more affordable level, plus faster and fairer service to those drivers who are involved in an accident. The new Ontario motorist protection plan is an impressive step forward, in our view, for everyone who must have car insurance in this province.

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Since these are public hearings, we also want to let consumers know that there is a better car insurance system on the horizon, that it will provide more money to more people, and more quickly, and that they should not be misled by those critics who are motivated by their own self-interest or otherwise.

I do not intend to cover the proposed new threshold no-fault plan in any substantial detail. The members of the committee, I am sure, are all quite familiar with its major components. Rather, I will simply comment on some of the key elements of the automobile insurance system we

now have and the new plan which is in prospect for later this year.

Let me be frank. The compensation system we now have in Ontario for automobile accident victims is erratic, inefficient and wasteful. It has resulted in a poor and inequitable distribution of loss payments. Some car accident victims who should be entitled to payments are denied them because they are unable to prove fault, not necessarily because they are at fault. Others must wait many months or years for payments because of the delays inherent in the legal system. And over one quarter of all the claims payment dollars in personal injury cases pass into the hands of lawyers, a total now estimated at over \$500 million a year.

Our present automobile insurance compensation system is substantially based on the tort principle, on determining who was at fault for an accident. But as we all know, that is not a simple proposition. While there are many road accidents in which the blame is easily and quickly attributable to one at-fault driver, there are many more where this is not the case. There are shadings of fault, there are percentages of blame, cases where good and responsible drivers make just a tiny error of judgement, a momentary lack of attention, and find themselves in an accident. I suspect every one of us in this room today has had a momentary lapse of attention behind the wheel of a car, perhaps skidded on a patch of ice into the other lane and said, "Thank goodness nothing was coming the other way."

It is worth noting that since 1973 the topic of automobile insurance in Ontario has been the subject of at least four major studies. I have provided details of these as an attachment to this paper. All but one of the detailed studies into automobile insurance recommended the adoption of no-fault. Mr Justice Coulter Osborne's study was the only one of the four to recommend the retention of tort. It is noteworthy, however, that the Osborne study made no detailed analysis of the then current costs involved in retaining tort, and the costs have continued to escalate.

At the very heart of the problem is a key concern of the six million drivers in Ontario—affordability. This is a main issue, the public's willingness to pay for the system we now have. We are all well aware that drivers in the province have made it abundantly clear they are simply not prepared to accept large rate increases. They have sent a plain message to us all that something must be done to control rising car insurance.

There is no mystery to the cost of car insurance. Premiums are set which reflect the

risk of an individual consumer driving a car. These premiums form a pool of capital from which losses can be paid. When the damage to cars and injuries to people exhaust the money available to pay losses, premiums have to go up. In other words, it is a business that is claims-driven.

The only way—I repeat, the only way—to bring down the cost of automobile insurance, or indeed to hold increases to reasonable levels, recognizing the impact of inflation, is to address high claims costs on all fronts. The two major contributors to these are, first, rising costs from the increased number and severity of accidents and, second, the enormous and increasing flow of money into legal and investigative expenses.

Now, how does the new threshold no-fault plan in Ontario address the problem?

First, it puts the needs of injured accident victims ahead of finding fault for what happened. The new system is directed towards fast and fair payments to the victims of accidents and away from the slow and costly process of the courts. Are the needs of a paraplegic any less because he or she cannot prove fault for an accident?

Second, the new plan provides much more equitable compensation to people injured in car accidents. The lawyers' lobby has pointed to situations where there is a reduced amount payable to injured people under the new system compared to the old. However, they ignore the fact that a great many injured drivers or their passengers are devastated both financially and physically because of inadequate protection under the current tort system they so strenuously defend.

Third, the new plan returns more of the premium dollar to those who need it, not to those who simply live off the litigation system and profit from it. Regardless of whether a case is settled in one month, one year, three or even five years, the legal expenses continue to be billed at about \$200 or more an hour.

My fourth point is that the new no-fault plan offers a fair and sensible way to contain the soaring costs that have been driving automobile insurance premiums in recent years. The government has announced a series of decisive steps which address the major component of insurance costs: the increasing number of road accidents and the rising number of severe accidents. There will be some measures of tort reform, increased penalties for traffic violators, tougher traffic law enforcement and more severe penalties for drinking drivers. At the same time, at-fault

accidents and traffic convictions will, as now, attract higher premiums.

It is absolute nonsense for those defenders of the present system to suggest that the proposed new plan provides a windfall to insurance companies. The new plan represents a way of containing the cost of automobile insurance to consumers by providing relief from premium tax and OHIP costs. We can be sure that the competitive instincts of over 100 insurers vying for business will ensure that no more than reasonable profit margins are obtained, but even here there is an added safety valve: All rates will be subject to the insurance commissioner's approval.

Speaking for a moment as chairman of the Insurance Bureau of Canada, which you heard from yesterday, I should point out that general insurance companies, through IBC, are very active in road safety. IBC provides strong support to the Canada Safety Council, provincial safety groups, the Traffic Injury Research Foundation and the Insurance Crime Prevention Bureau.

And speaking for Royal Insurance, we have some independent initiatives also. For example, we presently are the largest single financial sponsor here in Metropolitan Toronto for one of this city's most successful driver improvement courses for seniors.

To address the second problem, the vast and expanding flow of money into legal and investigative expenses, the Ontario government reviewed the measures taken in several other jurisdictions, both here in North America and abroad. The program of automobile insurance in Quebec was one, a total no-fault plan which is said to be effective, and the system in Michigan also seems to work well. An Associated Press article of July of this year, quoting *Changing Times* magazine, said: "The Michigan system is widely regarded as the best and gives drivers more protection per premium dollar than any other state. Particularly noteworthy was that the rate of premium increase in Michigan was 42nd in the nation."

I would like now to address two points which the vocal minority of lawyers have made much of recently: the elimination of awards for pain and suffering and the lawyers' claim that their prime motivation is in defending the rights of drivers.

While the new system will no longer award dollar amounts for pain and suffering conditions such as anxiety, depression or loss of consortium, it will meet the more important purpose of bringing the victims back to normal health with

psychiatric counselling, rehabilitation and other medical services.

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If pain and suffering exist as a result of a car accident, and they do, they will be present regardless of whatever insurance program is in place. What the lawyers are really talking about is money. Certainly the thought of prejudicing a big pain-and-suffering award can get in the way of speedy and effective rehabilitation of an injured party. In this context let me quote from the 1986 Ontario Task Force on Insurance, more commonly referred to as the Slater report:

"The present tort insurance system, although run by a well-intentioned and compassionate judiciary, remains riddled with uncertainty and unpredictability—so much so that many commentators have described tort litigation as a 'lottery.' The most crucial criteria of payment are largely controlled by chance... whether one has the good fortune to retain a lawyer who can exploit all the variables before an impressionable judge or jury, including graphically portraying whatever pain one has suffered."

For truly serious claims where people are left without permanent physical injuries, the new plan does make provision for payments. The vast majority of injuries from automobile accidents are nonpermanent; the victims make a full recovery and get on with their lives. While there may be an element of pain and suffering present, the driving public in this province must decide whether it is prepared to keep on paying for larger and larger awards of this kind. Surely it is more socially responsible to allot more claims dollars to pay for lost income, rehabilitation and long-term care rather than as a financing mechanism for general damages awards and lawyers' fees.

The lawyers' lobby group has admitted it has a vested interest in keeping the fault system in place. They have have also claimed that they are really above the issue and that the defence of consumer rights is their primary motivation. One can only guess as to which of these considerations is paramount.

In closing, I would like to make a couple of observations about the new plan.

On the question of benefits, I would like to suggest that consumers earning over \$30,000 a year—that is, about 10 per cent of the Ontario population—should be encouraged to buy higher limits. To make this \$450-per-week limit universally higher and available to all drivers in the province will have the effect of increasing the base premium costs. The result of this would be

to have lower-wage earners earning up to \$30,000 per year subsidizing those with higher incomes.

Whatever is concluded following the presentations to these public hearings, our overriding concern will be to provide sound insurance products and reliable service that will make policy benefits available in the most effective and cost-efficient way possible.

The new threshold no-fault plan is directed towards enhanced benefits paid quickly and fairly and away from the expensively wasteful and slow litigation process. From our experiences on a day-to-day basis as one of this province's major automobile insurers, we have vivid demonstrations of the inequities of the present tort system in dealing with accident victims. It is time for a change. The new plan represents a way to contain the costs which have been driving up premiums for all drivers and it paves the way towards a stable and affordable automobile insurance market in this province.

That is the presentation. We will be happy to respond to any questions members of the committee may have.

The Chair: I have Mr Runciman, Mr Kormos and Mr Nixon for five minutes each.

Mr Runciman: I found it noteworthy that you were downplaying the importance of Osborne and quoting Slater.

Mr Elms: I just thought it was appropriate to give Dr Slater equal time.

Mr Runciman: I do not think that is appropriate. I think it may be more appropriate for you to indicate to the members of this committee, and perhaps for the purpose of the record, that Slater was really looking at the general liability crisis, the so-called crisis, which some have said was not a real crisis but something that the insurance industry itself created. Whether indeed that is a fact or not, auto insurance was a very small element of the Slater report, and that was confirmed by the government through Mr Kwinter in the establishment of the Osborne commission. We have heard it said by many that Osborne was the most comprehensive study in the insurance industry ever done anywhere, and I just wanted to put that on the record.

I want to talk a bit about your own company. We saw a report in the media the other day where losses in the insurance industry are dropping. In fact, 1989 looks like it is not going to be a bad year for the auto insurance industry in Ontario. What does Royal's performance look like for fiscal 1989?

Mr Elms: I think the proper perspective is that a less bad situation seems to be emerging, certainly for us. I think it is relevant to mention that traditionally the accident experience deteriorates very substantially in the fourth quarter because of prevailing weather conditions, and that is to be expected.

Mr Runciman: We have very limited time. I asked a specific question.

Mr Elms: Okay. I will give you the numbers. The final numbers have not yet been put together. We expect to have done a good deal better than most of our confrères in the business. We estimate that for the personal automobile business in Ontario we may have a profit of about \$5 million after attribution of all investment income, and that represents about three per cent of our premiums written. That follows 1988 where we had an absolute loss of over \$3 million.

Mr Runciman: Okay. I am trying to make a point here. You are looking at \$5 million in fiscal 1989. That is without tort reform, which is coming in, and that is without the premium tax and OHIP benefit breaks that have been allocated. Also, I do not know what the impact of the government shemozzle on uniform rates was on your company; I expect it cost you a few bucks as well, so that your bottom line would have been that much larger as well.

I guess what I am trying to say is it seems that there is a turnaround occurring. If we just take a look at tort and at the tax breaks the industry is getting, I have to wonder about that particular element and why there is a need here.

Mr Elms: What do you mean by tax breaks for the industry?

Mr Runciman: I think they are clearly tax breaks for the industry.

Mr Elms: It is a nonsense. These are costs we will not be absorbing and thus will be not allowed to reflect in our premium computations.

Mr Runciman: The industry itself proposed a smart no-fault after Slater. Were you supportive of that smart no-fault plan?

Ms Maddocks: Yes, we were.

Mr Runciman: Okay. That plan included a \$720 cap indexed up to six per cent. It included the opportunity to sue for excess economic loss. There was no elimination of psychological injury. I would like to ask, why did you support that? Why then, not now? What is the change of heart?

Ms Maddocks: One could ask you the same question, why you supported choice no-fault at

the last meeting I was at, and now you are on to a whole different ball game. It is like, "If it moves like a duck and quacks like a duck, it must be a duck." You move and quack like a lawyer, and so does your confrère beside you. I think what we are looking at is a situation where, frankly, we have got six million drivers to protect—

Mr Runciman: You are protecting your bottom line, that is what you are protecting.

Ms Maddocks: One hundred and two thousand people out of the six million were unfortunate enough to be injured in 1988, and that is a tragedy, but there are also some five million people who say no to double-digit increases.

Mr Runciman: I asked you a specific question and you are not answering the specific question.

Ms Maddocks: You railroad over specific answers.

Mr Runciman: I asked you a specific question—

Ms Maddocks: Which was?

Mr Runciman: —with respect to smart no-fault, which you supported, which included a host of benefits this government has eliminated that are going to benefit you and other members of your industry.

Ms Maddocks: No, they are not going to benefit us.

Mr Runciman: I am asking you—

Ms Maddocks: No, they are not. They are going to benefit the consumers.

Mr Runciman: They are certainly going to benefit the consumers of the province.

Ms Maddocks: They absolutely are.

Mr Runciman: They are certainly going to benefit the consumers of the province.

Ms Maddocks: Yes, they are.

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Mr Runciman: Why are you not here today saying that those kinds of changes should be incorporated? Why not? Because it is going to affect your bottom line; that is why not.

Ms Maddocks: The money is coming from the lawyers, which is where your motivation is coming from.

Mr Runciman: You do not want to answer these questions. You came here not prepared to answer these questions.

Mr J. B. Nixon: You won't let her answer the questions.

Mr Runciman: She will not try.

Mr J. B. Nixon: You will not let her.

Mr Runciman: She will not try.

Mr J. B. Nixon: Behave like a gentleman or go home.

The Chair: Order.

Mr J. B. Nixon: Shut your mouth for a change.

The Chair: Order, order.

Mr Elms: Excuse me, can I put a perspective on this?

Mr Runciman: No, you cannot; you will not give an objective perspective.

The Chair: Order.

Mr Runciman: I have asked a specific question in regard to no-fault and you are not prepared to answer it. You and your colleagues are trying to dump on us, but you are not prepared to answer.

Interjection: You are not prepared to listen.

The Chair: Order.

Mr Runciman: I am prepared to listen if we are going to get a meaningful answer, not a bunch of baloney.

The Chair: Order. Hello. Remember me, the chairman? The guy up here who is getting paid the extra \$11 a day for doing this. Thank you. Now that we have things cooled out for a bit you might have eaten into some of Mr Kormos's time. I do not know whether you want to let Mr Runciman—

Mr Kormos: The hell he did, Chairman.

The Chair: Anyway, Mr Kormos, it is your turn.

Mr Kormos: Madam, you are right, I am a lawyer, but I have to tell you that for 10 years I practised criminal law—I have defended people charged with theft, burglary, robbery, rape and murder—and I do not think we have ever met professionally, but I have never—

Ms Maddocks: Impaired drivers?

Mr Kormos: Yes, and impaired drivers. I am not sure, but I do not think I have ever acted for you. In view of what the insurance industry is doing to drivers in Ontario, we may well have a professional relationship at some point. But I have to ask you this: There appears to be absolutely no criticism of this bill in your submission today. Is that correct?

Mr Elms: I think there is a suggestion that we would have preferred a complete no-fault system.

Mr Kormos: The threshold that is being provided is a more onerous one than the threshold

that has been requested by the Insurance Bureau of Canada in its lobby efforts, let's say in its submissions to Osborne back in 1987.

Mr Elms: Perhaps I can jointly respond to you and Mr Runciman.

Mr Kormos: Do not cut into my time because of Bob.

Mr Elms: In bottom-line terms, the insurance industry can respond to whatever system is put in place, but it demands payment of adequate premiums to cover the loss costs associated with the system. As representatives of other bodies have suggested, what is proposed here is a positive step forward of a compromise nature which does reasonably protect the interests of motorists while at the same time putting a cap on in affordability terms.

Mr Kormos: I would not expect you to say anything less, because this appears to be exactly—as a matter of fact, a little better than—what the insurance industry has been asking for for a long time, perhaps even demanding.

My concern is about the records I have that indicate that Royal Insurance contributed \$3,000 to the Liberal Party in 1988, and it appears the Insurance Bureau of Canada, of which you are the president or on the executive, contributed, my goodness, \$5,100 in 1987 and \$3,000 plus another \$5,000 in 1988. That is a lot of drivers' premiums that have been paid as donations to your pals here in the Liberal Party, is it not?

Mr Elms: I do not have with me the numbers relative to the contributions to the Conservative Party, but certainly in the case of Royal Insurance they are equal. I suspect the same position obtains to the insurance bureau—

Mr Runciman: They may not be in the future?

Ms Maddocks: Mr Kormos's cheque is lost in the mail, but it may not be in the future.

Mr Kormos: So you have greased—

Mr Elms: You in the NDP do not get anything from us.

Mr Kormos: I am not surprised at all, but you have greased the Liberals well and with drivers' premiums.

Mr Elms: We provide equal support to the parties that support the free enterprise system.

Mr J. B. Nixon: I understand a number of my colleagues have questions too, but I just want to very quickly ask you about the proposition you put forward regarding the \$450 level for wage compensation. You suggest that income earners who have an income higher than \$450 will buy

additional coverage. Will your company be offering additional coverage?

Mr Elms: Yes. Actually, I would like to ask my colleague Ms Maddocks to reply to this because she does manage 250 ordinary working people and she may have a perspective on this.

Ms Maddocks: It was interesting, because I have been watching the hearings with some interest. Mr Kormos mentioned yesterday his ordinary factory worker pulling in 40 grand a year. I went back and did an analysis of my 255 staff. Admittedly, they are not ordinary people by your standards, because they are insurance people, but of the 255 staff that I have, 214 of those earn less than \$30,000 a year. So I had to ask myself, "Should those people subsidize the 41 of us, and I am one of them, who earn more than \$30,000 a year to get the increased benefit?" My own sort of socialist background and humanitarian bent says: "No, I don't think that is the case. I think that if you happen to be able to take more out of the system, then you should pay more in." I do not want people who are earning \$24,000 a year paying the same as I am paying. I am quite willing to subsidize that.

Mr Furlong: I have more of a comment than a question. I guess when I anticipated sitting on this committee and hearing some of the comments, I knew there would be some lawyer-bashing and I knew that it would be so because of vested interests. But I want to tell you that I resent, in part, the comments that are made in your brief in some instances which suggest that lawyers do not have a social conscience at all.

I will admit and I will tell you that they are interested, some of them, because they have a vested interest that this is the type of work they do, but in my community, some of my colleagues do not fit this category. They are very socially motivated, and they partake in a lot of ventures and interests in the society and in the community that they work in. I just think that some of the comments that are in your brief, and some of the comments that you have made, madam, I take exception to.

Mr Elms: I think we do qualify the comment in a number of instances by saying "a vocal minority of lawyers." In the same way, we in the insurance industry resent the comments we get from various parties about being gougers. As Judy has suggested, our industry is made up of ordinary working people who are trying to do a socially useful job.

Ms Oddie Munro: On the same question as Mr Nixon, on the \$450-a-week wage benefits

and your suggestions that you offer an alternative route for consumers, I gather that the basis of that assumption is to avoid any regressive burden on people who are earning less than \$30,000. The contrary argument is that many of those people would like to be able to claim more because the lost-income aspect of the formula may not take into account the potential for earnings.

I am wondering what your formula is in that regard. I realize you cannot be everything to all people, but for a student who is cut down in the best years of his life, do you pay any attention at all to his potential earnings? I worry that those 90 per cent are now being penalized for income they cannot justify but would have made.

Mr Boyle: Can I come in on that?

Mr Elms: Yes.

Mr Boyle: If they have got catastrophic injuries they are going to have the court system to go to, and for the others it is going to be reasonably short-term. I think what the government has done is balanced it and decided to look after the catastrophically injured people and left part of the burden with the short-term injured people.

Ms Oddie Munro: But how do you predicate the lost income? What factors do you put into that? Do you look at the scenario where a person is not reaching his potential as regards earnings right now, but could have been had his career continued?

Mr Elms: There is the provision for rehabilitation costs; in other words, if because of the injury he is unable to pursue the employment course he was on, the costs of retraining him to pursue an alternative career which hopefully would produce equivalent income. That is part of the proposed insurance package.

1220

Mr Sola: I just have one question. I think both opposition parties would agree that the proposed system would reduce premiums or keep them at a minimum for the coming year, but I have heard comments from my constituents and elsewhere that it does nothing to guarantee long-term control of premiums. Do you see anything in here that would keep premiums reasonable over the long term?

Mr Elms: I think the proposal for an insurance commissioner will ensure that premiums only go up commensurate with the rise in claims costs, and in looking ahead, who can predict what the inflationary influences are going to be on claims costs? I think the big safety valve, as we said in the paper, is the fact that there will be an

insurance commissioner scrutinizing premium levels.

The Chair: Thank you very much for your enlightening presentation.

Mr Kormos: I have a motion to move. I am in your hands. I can move it now or, in view of the fact that it is 12:21 or 12:22 and to accommodate, among others, Mr Runciman, who apparently has an appointment, I could move it at two. Would you rather I moved it now or do I have your permission to move it at two?

The Chair: No, I would say we are going to move it now.

Mr Kormos: I have given copies to the clerk so that he can distribute them.

The Chair: He is distributing them now.

Mr Kormos moves that during consideration of Bill 68 by the standing committee on general government there be a guarantee of a minimum of 30 minutes available for questioning following a submission, notwithstanding the length of a submission.

Mr Kormos: If I may speak to that motion now, we have seen Tuesday and this morning a number of submissions made to the committee. Each group or body has been permitted 30 minutes in which to make that submission and respond to questions put by basically three perspectives here, the government perspective—and mind you, it has six people to call on to ask questions—the New Democratic Party—we have only two—and of course the Conservatives are permitted only two here on the committee.

What has happened is that some submissions have been modest and have been, say, 15 minutes and that has permitted 15 minutes to be distributed equally three ways. Some have been, and rightly so, lengthier and more thorough. Some participants have dealt with more intricate aspects of the legislation that require lengthier periods of time. That has reduced the period of time for questioning.

The questioning process is so essential to a fair committee process. I appreciate that the subcommittee had originally decided and agreed upon 30 minutes, and I was a member of that subcommittee that did so, and I believe you were there, Mr Chairman. However, our experience over the last day and a half illustrates that we were in error when we felt that 30 minutes would be appropriate.

We should understand that this is probably going to lengthen our workday. As it is, we are sitting from 10 until noon and from two until 4:30.

Mrs LeBourdais: Five.

Mr Kormos: My goodness, five. Where I come from that is a five-hour workday, and none of the people where I come from get to work five hours a day, even most of the lawyers.

Mrs LeBourdais: My day started at 7:30.

Mr Kormos: It might lengthen our workday, but it is so important for this committee not only to properly hear but then to question and permit participants to respond. Part of what we saw today was the pressure on participants and on questioners because of the time constraints, and part of the ill will that is perhaps generated is because of that pressure.

We are probably going to have to extend our workday, but let us remember that every single one of us is paid a per diem for being here, above and beyond our regular MPP salary, and that amounts to whatever it is now, some \$80, give or take; plus every single one of us, including the Toronto members, is given a meal allowance, notwithstanding that we earn our regular pay as MPPs; plus you, Mr Chairman, of course receive a little bit more on a per diem, plus you get several more thousand dollars a year by virtue of being chairman, as I understand it.

I do not want to begrudge anybody any money. Far be it from me to say that nobody earns his pay. But the community surely has got to get value for dollar. The bucks they are spending on each and every one of us to be here warrant more than a 10 to 12 and two to five sitting. It warrants more than a five-hour workday.

We are getting paid extra money above and beyond our MPP salary. We are getting a whole lot of extra money above and beyond our MPP salary. People are watching this on TV and they are saying, "My goodness, we pay taxes and we pay their money, and yet they are not prepared to sit beyond five o'clock so that there can be adequate and thorough questioning of persons who come, some of them long distances, to make submissions here."

I think it is essential, notwithstanding that this will lengthen our day, that we adopt this guarantee of a minimum of 30 minutes available for questioning. That would give 10 minutes to each party. Even that is a pretty conservative period of time. I know that you would want a more liberal approach, but let's compromise. I say this is not at all unreasonable.

I appreciate it is a review and a change from what we had agreed upon earlier, but we did not have the benefit of the experience with the submissions and with the questioning. Surely to God, in view of the amount of money that the

taxpayers are paying us above and beyond our regular salaries—I know it is shocking to a lot of them to learn that we are paid food allowances to be here, notwithstanding that most of us would have to eat anyway—it is absurd to be paid per diems notwithstanding that all of us are paid anyway and that you, Mr Chairman, would receive many thousands of dollars a year more for being chairman and you do not even participate in the debate.

I know people out there are going to find that shocking, but that is the sad and sorry state of things. It is essential, in my submission, that there be a minimum of 30 minutes.

The Chair: Before I turn to Mr Runciman, I have two comments or points of information. Mr Kormos has alluded to the subcommittee report which, in fact, agreed to the time limits. It was subsequently agreed to by the full committee. The clerk tells me that each group or association that was called or has requested to make representation was advised that the best way to utilize its time, as well as the committee's time, was anywhere from a 10- to 15-minute verbal presentation accompanying any written length presentation. If they wanted to submit 200 pages, they could do that, and that would allow anywhere from 15 to 20 minutes for questions, discussion and comments.

In terms of the extra remuneration that each or all of us receive and I receive as chairman, some might consider that danger pay; some might consider it the ringmaster's pay for keeping the circus going.

Mr Kormos: How much is that pay? I am sorry. Come on, now.

The Chair: Extra per diem as a chairman?

Mr Kormos: No, no. Per year.

The Chair: Per year, I think it is in the neighbourhood of about \$9,000.

Mr Kormos: Holy zonkers. Incredible.

Mr Runciman: I am supporting the motion. I am a member of the subcommittee as well. In respect of the original guideline, I am not sure the motion is the ideal way to deal with it, but I share Mr Kormos's concerns about the problems we are facing now.

We had a witness yesterday who spoke for 25 or 26 minutes and left us about a minute and a half each to try to question her. We had the situation today with Royal as our last witnesses where, as a critic, I was trying to get some specific answers out of the witnesses and they were not prepared to do that. They adopted a strategy of the best defence is a good offence and

I simply did not have enough time to pursue what I think are some points that had to be put on the record.

I think there are some real shortcomings with specific witnesses appearing before us. Certainly not everyone appearing before us is going to require a lot of time. Especially as these hearings go on, we are going to be hearing a lot of the same kind of testimony from a variety of witnesses. I think that questioning time may be limited depending on the witnesses appearing before us. But I think there has to be some way of being more flexible to afford us the opportunity to have more time to get into some of the issues. Really, when you are simply getting five minutes or less, it is pretty difficult to deal in a meaningful way with witnesses.

Mr J. B. Nixon: I would like to point out at the outset that, notwithstanding the proportional representation in this Legislature, each party gets an equal amount of time to ask questions.

I would also like to point out that although there are only five hours per day allocated for hearings, which means we hear from 10 organizations, most members work eight to 10 to 12 hours a day. Mr Kormos works five hours—he will be answerable to his constituents—but the rest of us work eight to 10 to 12 hours a day. Some of us even read the briefs before we get here. I take it Mr Kormos does not do that because he is working only five hours a day. Let the people of Welland remember that.

Mr Kormos: They did not listen to you during the campaign. Why should they listen to you now?

1230

Mr J. B. Nixon: The problem I have with this motion, quite simply, is that it would give time to these two to abuse and batter to no good end witnesses who come before us in good faith. Frankly, I think that is what is really shocking.

Mr Kormos: That is really a dumb statement.

Mr J. B. Nixon: The behaviour of Mr Kormos particularly should be shocking every viewer. I find the abuse heaped on witnesses entirely objectionable and I certainly, for all those reasons but most particularly, would not want to allow him more time to abuse and batter witnesses who come before this committee.

The Chair: Just as a means of information, the clerk informed me that the standing committee on resources development, in a bill that it is reviewing, has allocated only 20 minutes. Each committee is free to do what it would so please.

Mr Furlong: One of the interesting parts about this motion is that I find it astonishing that Mr Kormos would want the time available for questioning. He has asked damned few questions but he has made a lot of statements. I am not prepared to support a motion which will just simply allow him to diatribe the way he has been since these hearings started.

Mr Kormos: I will defer to Mr Sola because I am going to respond and then I will expect the question to be put.

Mr Sola: All I have heard from the opposition so far are harangues, diatribes and histrionics. I think 30 seconds is too much for that sort of thing. It seems to me that the opposition members are here to listen if what they hear from the delegations is to their liking. When what the delegations say is not to their liking, then they resort to abuse of the witnesses. I do not think this committee was set up to abuse the witnesses. We are here to listen to the public and not browbeat them. As for value for dollars, we get much more value for our money when we keep our ears open and our mouths shut. That is all I have to say.

Mr Kormos: In summation, for Mr Sola, who spoke last, to say that 30 seconds is too much displays his perspective of democracy. It is so typical of this government because it wants to rule this Legislature with an iron hand and a heavy boot. They have demonstrated that time and time again. They have demonstrated it through their basic dishonesty and their refusal to permit full discussion of issues. Let us face it, this whole committee process is something of a farce because the whole matter is deemed to have been wrapped up and delivered with a bow notwithstanding that we have not finished our consideration of it.

As for histrionics, I am surprised Mr Sola came up with that. He is not prepared to see a thorough and hopefully, in some instances, effective questioning of persons who come here to make submissions.

When it comes to Nixon, I do not need a little Starr trekker, somebody who has been dusted with Patti Starr's grace and somebody who has been dumped from his parliamentary assistant role most ungraciously, giving me instructions about work. My constituents will deal with me in the appropriate manner.

This clown, I do not know that he worked in the by-election down there back in 1988 or whether his meetings with Patti Starr consumed too much of his time at that point in his little political history, but it remains that the people down in Welland-Thorold know how I work and

when I work. I am objecting to the fact that clowns like Nixon who come here without preparation because he makes statements that are absurd, that are off the wall, he makes statements—and as a matter of fact, the last time—

The Chair: You are speaking to the motion, I presume.

Mr Kormos: Yes. The last time I heard Nixon speak in a public forum about this particular bit of legislation, his ignorance of what was contained in the legislation was patent and apparent. That is available on videotape.

I can see that there are lies, damned lies and then there are Liberal lies, but it is too much to listen to this clowning on the part of Mr Nixon, the ex-parliamentary assistant. The only press he has got in the last 12 months was because of his connection with the spider lady, Patti Starr. I am not at all interested in his dumb, really dumb, comments about who works and does not work.

The fact is that this committee is sitting for only two hours in the morning and three hours in the afternoon. The fact is that people are being paid extra money for sitting on this committee. You are being paid a whole lot of extra money for being here in addition to your per diems; that means extra pay every day. We should be demonstrating to the community that we are prepared to spend more than five hours a day, that we are prepared to accommodate the people who want to make submissions in this regard.

The government has restricted the period of time available to participants. The government has no real intention of consulting with the public or making itself available to the public. The government has every intention of ramming this legislation through. They are going to tinker with it because Dave Peterson alluded to that just yesterday. They are going to tinker with it, they are going to jerk around with it.

What they are going to do is GST it, they are going to Mike Wilson it, they are going to drop from nine per cent to seven per cent. They are going to probably tinker with the threshold, probably tinker with the no-fault portion of it, respond to some of the very appropriate criticisms of some of the people like ARCH today, but they are not going to make any fundamental changes to the threshold process.

For Pete's sake, let us at the very least show some respect for the people who want to participate and permit some reasonable period of questioning. The only fear seems to be that it will extend these people's workdays.

The Chair: I will put the question. I assume you are going to want a recorded vote.

The Chair: I will put the question. I assume you are going to want a recorded vote.

Mr Kormos: Yes.

The committee divided on Mr Kormos's motion, which was negatived on the following vote:

Ayes

Kormos, Runciman.

Nays

Furlong, LeBourdais, Nixon, J. B., Oddie Munro, Sola, Velshi.

Ayes 2; nays 6.

The Chair: The committee is adjourned until two o'clock.

The committee recessed at 1237.

AFTERNOON SITTING

The committee resumed at 1359 in room 151.

The Chair: Mr Olds, I believe the clerk has circulated a copy of your presentation.

LEWIS OLDS

Mr Olds: My name is Lewis Olds. I am here in really two capacities: as a professional business evaluator and as a private citizen. I am the director of business evaluations at the chartered accounting firm here in Toronto of Soberman Isenbaum and Colomby. In that capacity I provide expert opinion evidence and prepare reports on business values in various types of litigation as well as loss of income claims or loss of income estimates, both on behalf of parties making claims and on behalf of parties defending against claims. So I am here in part because I have had a fair degree of experience in estimating loss of income, some of which has to do with motor vehicle accidents.

I wrote a letter on 18 December to the chairman of the committee and today I wrote an additional letter, which I believe you have copies of, and if I may—it is not too long—I am going to read it:

"On 18 December 1989 I wrote to you, requesting permission to appear before your committee to present my views on the pending legislation regarding changes to insurance coverage in Ontario.

"I have been invited to speak to you today, and I thank you. I am here today both as a professional and as a private citizen. As a professional practising in the field of business valuations and litigation support services, I have a concern that the proposed legislation will deny many automobile accident victims the right to the due process of law. As a private citizen, I have a concern that my car insurance premiums are going to go up and that I am going to obtain less benefit from paying those higher premiums.

"There are two major elements to my arguments against the current proposed legislation, as I understand it." I will admit that I am not a lawyer and I have not done extensive research into all the implications of it.

To continue with the gist of my letter, the first argument is based on my personal experience. Two months ago my son was killed in a tragic accident in British Columbia; not in a car accident, but in a fireworks accident. He was 13 years old. There was some indication that the fireworks were defective and there was a general

recall by the government of these fireworks from public sale. The store that his mother bought the fireworks from did not honour that recall and sold his mother the fireworks. Subsequently he lit one off and it exploded and killed him instantly.

Lawyers from a top law firm in Vancouver advised me that because of the rules regarding awards, particularly pain and suffering awards in these kinds of cases, I really would not have the basis of a claim for the simple reason that the legal fees would be greater than the amount of the award and, as a 13-year-old, he had no income. So as painful as it was, and his mother is still not working, we did not have any access to remedy in this case.

I guess the point I am making here is that in BC across-the-board remedies for pain and suffering in tort law are minimal. In Ontario, we have a reputation of being the California of Canada, for better or worse, and it seems as though pain and suffering becomes the major element of awards and cuts across the segments of citizenry in Ontario, both those who are employed and those who are not, so that if a person who suffers an accident does not have loss of income, at least he is going to be compensated in some way for the agony that he has gone through.

I believe, as I understand it, that the proposed no-fault insurance in Ontario will not allow in many cases awards for pain and suffering. Yet in other cases I have cited, such as slip-and-fall accidents on an icy sidewalk, they are entitled to pain and suffering awards. This seems to be unfair. Perhaps there is some solution that has not yet been arrived at, such as a policy as to limits on pain and suffering, in eliminating ambiguity which appears to be clogging up the courts and the negotiations between claimants and insurers. I will leave that in your hands. There may be a way to eliminate litigation and the costly aspect of it and at the same time allow pain and suffering awards to people who do not have the basis for other claims, especially in some of the so-called minor injuries or short-term injuries that nevertheless cause a great deal of agony in people's lives.

My second point of opposition to the proposed legislation has to do with the limit of award to \$450 per week for loss of income. As a business valuator, I am asked to calculate losses of income in a variety of situations, including traffic accident victims. By limiting the award to \$450, there are many people whom I have calculated a

loss of income for who will receive substantially less.

I cite the example of self-employed individuals who may be forced out of their business for a period of time. In the current situation, they receive an award. After they are back and able to come to work or start their business, they have got a lump sum amount of money to recapitalize, start promotion, whatever is necessary to rekindle the business. Under the circumstances, as I understand them for a great number of accident situations and injury situations, they will not have any award and will consequently suffer a permanent loss economically. This may also affect other people, including their employees.

Higher-income employees suffering psychological or brain damage will not receive any compensation in many cases. I have a personal friend who is a top systems analyst with a trust company and who managed a whole department. He suffered a brain injury in a car accident where he was a passenger in a taxicab. Under the current system, he has recourse. He can still play squash, but he has lost his memory. He cannot remember what he was doing the last time, and systems analysis involves extensive abstractions to design a computer system for a department. He has suffered a demotion, loss of pay. He will have an award today, but as I understand the legislation, this type of injury will not be compensable.

Under the current system, I see a number of situations—I guess they are called the soft-tissue injuries—which the current definitions, as I have read them in the legislation, seem to exclude. I ask you to reconsider that. Just as there are certain types of injuries of a permanent and serious physical nature which need the input of experts from the medical professions, there are certain other types of injuries that cause psychological damage or serious depression which I think you should be reconsidering. These people have serious damages. For a long time, mental illness has been considered to be a disease or an illness. It seems to me if that is caused by an accident, that is an injury. I really think you should be considering that as a basis for a claim.

Finally, I would like to ask you whether you have really carefully considered all the options for reducing car insurance premiums in Ontario. Certainly nobody likes to pay high car insurance premiums. As an accountant, I can empathize with the actuaries of the insurance companies trying to figure out what the rates should be, given the uncertainty of how much the awards are going to be. Certainly the legal process right now

has a lot of flaws, but it seems to me there are other alternatives.

I am not suggesting that a government insurance company is the only answer. Having lived in British Columbia during the Barrett years when the change to insurance came in and we set up the Insurance Corporation of British Columbia, a lot of people were concerned about loss of jobs and that the whole insurance industry was going to get turned upside down. It did not happen. There were some problems. Mr Barrett, as a matter of fact, lost his office in part because of the expenditures that were made to set up ICBC, but now the system works wonderfully.

They have lower rates, they have a viable system and it is a full tort system. Their premiums, I understand, from having spoken with the president of the Trial Lawyers Association of British Columbia yesterday, are expected to go up six per cent in 1990 as opposed to Alberta, which does not have government insurance, going up 10 per cent, in spite of the fact that BC is extremely litigious and has more accidents.

I ask you, in conclusion, to go further in your research. I hope this committee hearing will allow you the opportunity to explore as many opportunities as possible. I understand this legislation is in draft form and has nothing to do with such things as government insurance, but I am just suggesting that there are other ways to improve the system of high cost of insurance premiums, including limitations on legal fees.

I am not here to defend the lawyers by any means. I believe many accidents and many situations can be settled without recourse to the legal system. Nevertheless, if you throw it out entirely, then a lot of people are not going to be entitled to the due process of law that they have now.

The Chair: Thank you for your presentation. You have left us lots of time for some questions and comments.

1410

Mr Kormos: I am sure other people are going to echo this particular sentiment. I am impressed that you obviously took it upon yourself to research and prepare these comments.

Similarly, I have to tell you, in view of the fact that we are advocates of a nonprofit public system, knowing that is a more efficient way of delivering automobile insurance, that it can do so fairly and indeed affordably as demonstrated in Manitoba, Saskatchewan and, perhaps most accurately in terms of comparison, British Columbia. I tell you that because there might be

some here who would feel that my comments and praise of your submission were affected by the premises we operate from in terms of believing that a public system is preferable.

In regard to your impressions of the legislation, of the impact of the bill, one of the concerns I have is that there is not a clear understanding of how seriously this bill is going to impact on people across Ontario. Do you share that understanding? I assume you have talked to other professionals, your coworkers and people you meet socially. Do you share that impression that a great number of people do not understand how seriously this legislation is going to affect them?

Mr Olds: I think many people I have talked to say: "It is a fait accompli. Whatever happens is going to happen by the government, and we have no say in this matter." At the same time, the people I have spoken to, even in my own profession, because of the fact that it is not a quantifiable thing directly—the only way you can quantify it is the way you have done it, and I appreciate that—are giving me the general impression that they are really not thinking about it. They hear about the goods and services tax coming and they say: "It is going to happen. What are you going to do? It is more and more expensive to live in Canada."

Mr Kormos: The government has been marketing this scheme under the label of no-fault. I trust one of the reasons for that is that no-fault carries some positive connotations with it. Just generally, the language itself is positive language. But my impression is that you have been able to discern that it is not so much a no-fault plan as it is a threshold plan, that the most significant part of it is this threshold that is going to bar people from recovery. Is that a fair comment?

Mr Olds: That is what I understand. I believe the idea of no-fault is that you do not have to go seeking the bad guy, that there are awards available simply because you are injured. It seems to me that under the cover or the guise of a no-fault program, there are some underlying implications having to do with these thresholds that really have nothing to do with no-fault. It would simply be legislation to limit awards, be they no-fault or full tort.

Mr Kormos: You relate, and I am trusting it is a pretty difficult thing to do, the tragedy involving your own family. In this insurance scheme, a 12-year-old kid who did not suffer a fatality, let's say, but who, walking home from school, suffered a broken back as a result of being hit by a drunk driver, would be in traction

for three or four months in a hospital and then recovering at home for an additional year. Because it is not a permanent injury, that kid would not receive a single penny for pain and suffering—

Mr Olds: That is the way I understand it.

Mr Kormos: —and would receive no compensation for his two-year delayed entry into the workforce. He would be two years behind his peers or schoolmates by the time they were 18, 19 or 20, entering the workforce. Similarly, this grandiose label of no-fault would not apply to that child because, notwithstanding that it was not his fault, that would not help him one iota, because he would receive not one penny as compensation for pain and suffering, for loss of enjoyment of life or for delayed entry into the workforce. That certainly is a tragedy as well.

Thank you for coming and sharing your comments which, in my view, are most valid.

Ms Oddie Munro: In relation to your page 2 on pain and suffering, I guess it is the contention of the drafters of the bill and of the ministry staff that their efforts to ensure that psychiatric and psychological rehabilitation occurs will respond to pain and suffering. I am wondering if you could comment on the rehabilitation side as to whether you think that is true, including in that the kind of professional services you feel would be important. I gather you are talking about the remedy for pain and suffering as in many ways including a financial agreement back to the client. If we are to take rehab seriously through this plan, I am wondering if you can comment on what should be included.

Mr Olds: I wholeheartedly endorse the plan to make an emphasis on rehab services. I think that a lot of the pain and suffering in the cases I have seen has to do with people who, either because of their own ignorance or because of lack of funding, have not been able to avail themselves of rehab services, and I think they are getting better. I think the sophistication of dealing with pain management and dealing with vocational rehab is getting better. I would endorse that, and if it is the government's view that this is a way to deal with pain and suffering through tangible action, I certainly support that.

Some things, though, you cannot quantify, or more important, you cannot treat, certainly not in the short run. I will give you an example. For better or worse, an Armenian gentleman who was a recent immigrant to Ontario and had started a business as a photographer and was also running a TV show as a moderator had a car accident, a whiplash, not a serious injury. But

because of that and because of his nationality and his pride as an individual—he married a lady 20 years younger than he and he felt his virility was at stake, he could not sleep, he had sexual problems—he lost his job. He had to close his studio. Now, at 57, he does not know what he is going to do. He sits around and he is depressed.

That is the kind of problem I see where somebody can help rehabilitate him and work with him. In fact, they are. He is going to see counsellors. But for a period of time either he has a loss of income, or if he were not working, if it were another situation where the person was not working but it takes time for him to recover, if he has no award, then there is either an economic loss or there is just no compensation.

I can tell you from my own experience it really hurts to have a serious loss. Money does not replace my son. It never will. Money would not replace a person in traction, but it softens the blow.

Mrs LeBourdais: I would like to just make two comments. First of all, I would like to thank you very much for your presentation. I think the very fact that you have had such personal involvement is particularly relevant to all of us. You say in your opening that you are here both as a professional and as a private citizen. Are you here in fact on behalf of and do you speak on behalf of your firm?

Mr Olds: I speak on behalf of my firm with respect to concern about the implications of this legislation for people, including our clients, as to their car insurance premiums, particularly some of our higher-income clients, who are going to be very concerned about \$450 a week being all they are going to get. They are probably going to have to pay much higher premiums for the additional coverage which I understand may be available for additional loss-of-income coverage. I do not speak on behalf of my firm with respect to my personal views about such things as government insurance.

Mrs LeBourdais: I find it somewhat ironic. My own accountant is with this firm and perhaps he is unaware that I am on this committee, because I have not received any correspondence from him.

With respect to the other point that you were commenting on, that while damages for pain and suffering do not replace an individual, they somehow compensate, I can understand that. But do you feel that compensation should be paid for by all people having to pay escalated premiums as a result? Do you not think that is at the bottom of this whole problem?

Mr Olds: I would say it is at the bottom of the whole problem. My concern is the lack of consistency, or at least the apparent lack of consistency, in treating this in the automobile insurance area and nowhere else. If it is your intention to introduce legislation to limit pain and suffering awards in all tort actions, then I would say you are at least being consistent.

Monetary awards for pain and suffering are always going to be a difficult area. To the extent that one lives in Ontario and cannot get it but one lives in British Columbia and can get it, or in the state of New York and can get it, that concerns me as a person. I guess just generally I would certainly say, if your intention as a government is to introduce this across the board, then I would feel at least that you are being fair.

1420

The Chair: Just a question about your squash partner: In the accident he had in the taxi, was he physically injured?

Mr Olds: Yes.

The Chair: Is he seeking legal recourse through the current system now?

Mr Olds: He was physically injured, but he has recovered from that. He is seeking recourse through the system now.

The Chair: Okay. Again, thank you very much for your presentation.

We have from the Pain Management Clinic, Allan Walton, the president. For the committee members, I believe it is exhibit 17 in the material that was distributed to you earlier, so perhaps you can find exhibit 17. It should be a white brief, Re Bill 68, Proposed Ontario Motorist Protection Plan.

Mr Walton, we are in your hands for the next half-hour. A recommendation would be 15 minutes for a presentation and 15 minutes for some comments and questions and discussion.

Mr Walton: That should be fine.

Mr Velshi: I do not have a copy.

The Chair: Sorry, you do not have a copy of it? It looks like this.

Mr Walton: I have other copies, if you require.

The Chair: Okay, sorry. Anyway, we will get you a copy.

PAIN MANAGEMENT CLINIC

Mr Walton: I would like to thank you for the opportunity to speak in front of the committee. My presentation is going to be primarily limited to a rehabilitation perspective. There is much in

the legislation that deserves comment, but my particular interest is as a treating professional, a rehabilitator.

I have a pain management clinic. The vast majority of my patients are people who have been involved in motor vehicle accidents. In reviewing the proposed legislation, I guess I have concerns in two main areas, particularly as it impacts on the rehabilitation of the patient. One is the threshold, and although the word "no-fault" has been bandied about, it really is a threshold system.

The wording of the threshold specifically excludes particular types of patients from legal recourse. It is those very patients, however, who tend to be disabled by those problems that are excluded. Chronic pain patients, post-traumatic stress disorder, psychological problems, closed head injuries would all be excluded in the threshold. They would not have recourse for lost income and pain and suffering. What that does is, it sets up two classes of patients. I have difficulty understanding the reasoning behind it other than a financial reason, but in terms of treatment, it has the effect of making a patient more difficult to treat.

It was my understanding that the legislation was attempting to replace with a service what might be available through a tort action, to increase the rehabilitation funds and access to rehabilitation for patients injured in motor vehicle accidents. However, by defining a threshold as it has been defined, we take an enormous step back by telling one particular type of patient that they will not be compensated to the same extent as another type of patient because of the type of problem they have.

Psychological and emotional problems are difficult to treat as it is where they are equally compensated. Where you tell a patient that if he admits he has psychological or emotional problems he may not be compensated the same as if he did not, there is an immediate reluctance on his part to accept that diagnosis, which of course makes it much more difficult to treat the patient.

The Workers' Compensation Board worked on that premise for some years and recently changed to include what it calls "nonpermanent" but what are really soft tissue and psychological problems as compensable problems. It is still difficult to treat, but it is possible. What this legislation does, while trying to increase the amount of moneys available to treat patients, is penalize them for having very normal and human psychological problems associated with a very traumatic event. While the threshold certainly

limits the access to the tort system, and I do not have a lot of problem with that, I do have a significant amount of difficulty with the manner in which it does it. I would much prefer a threshold that was based on a monetary amount or some other criteria but not on the dichotomy between a soft tissue or psychological problem and a so-called real problem.

The second area that I have concerns in is rehabilitation funds. The system, as it stands, allows for treatment under a semi-no-fault system wherein the first-party insurance company will pay for treatment. However, as all of us in the treating profession know it is very difficult to access that funding, primarily because of the attitude in the insurance industry and, no doubt, fostered by the adversarial process. It is not uncommon to have months of delays in attempting to access funding. In fact, we have cases now that have gone on for six months from the time we have seen the patient until we have been able to contact the insurance company and have it respond, still negatively, and that is not uncommon.

Our reading of the legislation does not include any increased access to funding. The amount of moneys is increased but, by and large, that was never really a problem except in some cases. The problem has always been in accessing the funding to treat those very patients. The argument has been made to us in the treating business, if you will, that with the insurance industry having to pay \$450 per week, there will be a strong emphasis and impetus on its part to pay for rehabilitation. However, as insurance people have told us now, it is easier to spend \$150 on a medical report to say the patient is not disabled and not have to pay them.

Second, economists have told us that up to 60 per cent of patients in Ontario are compensated under a private plan anyway and that that would not come to bear in the insurance industry. I think what we have is an attitude problem in terms of rehabilitation that this legislation does not address. It does not include the provision to access funding and to ensure funding will be in place for treatment. So on the one hand, the patient who has the chronic pain syndrome or post-traumatic stress disorder is stopped from financial recourse through the tort system and is limited to \$450 per week. They are essentially penalized financially for having a psychological or emotional problem. At the same time, they are told that enormous amounts of money will be made available for their treatment. It is often hard for patients to understand how the problem can

be real enough for treatment but not real enough to compensate for their lost income.

Further, they then find out that the money is not necessarily available for their treatment; it is, only if their insurance company does not kick up a fuss, which they have for years and years. There is nothing to guarantee that while the insurance company argues over the funding, they will get treated. There is nothing to ensure that there will not be months of delays, as there are now, for the vast majority of cases.

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If the emphasis of the new legislation is to improve access to rehabilitation or to provide rehabilitation as a service while reducing access to the courts, it does not do that. It has the capacity to do that.

I think some wording changes in terms of accessibility of funding would go a long way. I think changes in terms of the wording of the threshold would go a long way to at least stopping in its infancy this tendency to separate out these "real" problems where you have pathology and these "unreal" problems where there is psychological or emotional distress. Too many years have gone into educating the public and lobbying with the public that psychological and emotional problems are real, and if accepted, are treatable. What this legislation effectively does is undo all those years of work without replacing it.

In terms of rehabilitation, I think it was best summarized by a provincial court judge at a recent medical legal conference who said, "The insurance companies don't pay for it now, and under the new legislation, they won't pay for it then." Certainly all of our reading and our experience in accessing funding would tend to agree with that.

The Chair: Thank you for your presentation. Mr Kormos and Mr Nixon, and Mr Laughren as well now.

Mr Kormos: What kind of timing are we talking about?

The Chair: Seven minutes.

Mr Kormos: Most of my experience with pain that you are speaking of is with persons who are victims of both injury and then subsequently, usually, workers' compensation.

Tell us about the person who is denied compensation because he or she does not quite make it through the threshold. I appreciate there is a great sense of injustice that accompanies the severe and chronic type of pain we are talking about, whether it happens in a workplace or in a

motor vehicle accident. That injustice is amplified incredibly when the person says, "And it wasn't even my fault."

Tell us, if you can, what you anticipate would be the impact of somebody being told, "Look, your pain is very real and it is intense, but"—a judge, perhaps, telling a litigant, because there is still going to be a whole pile of litigants and a whole lot of litigation. Osborne talked about that as the Michigan experience; about, among other things, one, what the threshold is and, two, litigation with your own insurer about your no-faults, and you talked about that.

Tell us about the impact of a person's being told: "You don't quite make it. You got going, but you don't quite make it to the finish line in terms of passing that threshold." I am interested in that, because that is going to happen regardless of where the threshold is. There is going to be that person who does not quite make it, who falls just short, and that seems to me to be the greatest injustice, to miss it by the slightest degree, because it is going to be that distinctive. Could you talk about that, please?

Mr Walton: There is a tremendous amount of anger and sense of injustice when somebody is injured in an accident, when he is a victim and perceives himself as a victim. That is true whether there is a tremendous amount of physical injury or whether it is soft tissue with a lot of psychological overlay.

Some of what Mr Kormos was discussing happened with the Workers' Compensation Board. We do primarily motor vehicle accidents; we do do WCB treatments as well. Prior to the WCB accepting these types of injuries as real, patients assumed that if they were in pain and they could not work, they were entitled to compensation. When they then found out that, no, that may not be the case, that if somebody said it was a soft tissue injury—they essentially wrenched their back—and it was their perfectionist personality, their unyieldingness, their sense of trying to push themselves that had prolonged their problem, and therefore that was psychological and that was not compensable, what it triggered was this tremendous sense of injustice, tremendous sense of anger, tremendous sense of, "I didn't do this to myself."

The effect of that, of course, is to make the patient worse. The anger and the frustration simply makes the psychological problem more entrenched and increases muscle tension, which makes the soft tissue problem much more difficult to deal with and treat. You end up with having to treat the anger before you actually get

to treating the real problem at all, and often that is not treatable.

The gentleman before me who spoke and the example he gave you of the Armenian gentleman is, in fact, one of our patients. I did not know he was, but in fact we are treating this fellow. He is depressed, he is frustrated and he is real. Is he going back to work? Probably not.

We have patients now. I have physicians we are treating who are probably working at half their practice because of the psychological and emotional aspect of the motor vehicle accident they were in.

Patients find themselves in a difficult position. If they push themselves to try to do things, everybody says, "Well, see. If they only pushed themselves, they would be fine," but they pay a tremendous price. If they do not push themselves, then "they are just lazy and they just lie around and they do nothing." Either way, they are penalized.

There is a myth about chronic pain patients and patients with post-traumatic stress disorder that if they would only get off their behinds and get going, they would be fine. But anybody treating these people knows that, by and large, chronic pain patients are not—they tend to be hardworking, hard-pushing, driving, perfectionistic. It is all those variables that make them difficult patients. They are not the ones who sit around and look for compensation. In fact, it is the other type of personality that you generally see as your patient.

Mr Laughren: I think I have heard Mr Walton speak before on rehabilitation, as with the Workers' Compensation Board. You have answered most of what is bothering me.

I represent a constituency of lumbering and mining people, and they have an enormous number of back problems. Very often, when they come to me, they have been through a lot already. The X-rays and other methods that are used to try to detect back problems do not show anything. The doctors cannot say that the problem is a result of a compensable incident. Is that what you are telling us? If we restrict this to physical impairment and damage, we are going to get into that same morass with this bill on auto accident claims as we are in with the WCB on back problems that the board challenges because there is no measurable, detectable damage to the back?

Mr Walton: I would expect so. Certainly, the doctor-shopping, which was prevalent in the board, and still is to some extent, will likely transfer over. People are bright. If somebody

says to a patient, "You get this much money if you can find something in an X-ray or something wrong and this much if you don't," they are going to search for that much.

Unfortunately, most of the tests do not test for soft tissue injuries. Most of our medical tests are designed to deal with specific medical procedures. We do not have many medical tests designed to look for problems that physicians cannot deal with adequately.

If I have a cramp in my arm, I can be in excruciating pain; if it continues, I will continue to be in excruciating pain. The vast majority of medical tests I will go through will show that my arm is perfectly normal. The pain is not psychological, in my head. It is very real and it can debilitate me. But if I am going to be compensated differently, depending on whether I can find a test, then you bet, I am going to look for a test because I know that it is real; it hurts. Certainly I would expect patients to do that. They know their pain is real. They are trying to convince us.

Mr J. B. Nixon: On page 3 of your brief you suggest an effect of the threshold will be to create reluctance on the part of patients to admit to a psychological, emotional or psychiatric component of their injury. I am not sure I understand what you are saying.

Mr Walton: The effect of the threshold is to essentially say, if you have a physical or bodily injury, you can get compensated and you have legal recourse to compensation for lost income. If, on the other hand, your problem tends to be more psychological and emotional, then you do not.

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Mr J. B. Nixon: Can I stop you there? I think one of the problems we are flushing out and resolving in the course of public hearings is dealing with a lot of the misunderstanding about this bill. Let me assure you that whether you have mental or physical damages arising out of a car accident, you are entitled to no-fault benefits—

Mr Walton: Up to \$450 per week.

Mr J. B. Nixon: —unless you have bought additional because you are making a higher income.

Mr Laughren: Threshold.

The Chair: That is just the income.

Mr J. B. Nixon: That is right. The witness was referring to income replacement.

Second, do you not often meet in your practice or are you aware that there frequently are innocent victims of accidents who unfortunately

cannot prove that anyone was at fault and therefore do not recover? That exists now. Do you not often see in your practice that the delay of litigation and the tension and anxiety associated with the adversarial system frequently exacerbate or make worse the psychological condition of the plaintiff?

Mr Walton: The delay in treatment is far worse. That is a much more difficult problem. Many patients, while the litigation is ongoing, often are unaware of a lot of the details. In fact, often the longer it goes the more they are sitting back wondering if it will ever end. I think the greatest drawback to these patients is the inability to get treated, the tremendous delays, even after their physician has referred them, in getting funding to treat them. That, I think, is more of a problem.

Mr J. B. Nixon: There is a lot of doctor-shopping that goes on now too as I understand it, as you try to get the best medical reports to put before the insurance company and the insurance company tries to get the best medical reports to put before the court. Everyone is shopping around trying to get the doctor who will give him a favourable opinion.

Mr Walton: I think what happens is that you get mixed up between the tort action and treatment, rehabilitation.

Mr J. B. Nixon: Exactly; yes.

Mr Walton: I think it is easy to differentiate the two. If a patient is sent to a physician for his opinion and the physician is in a position to begin treatment if he feels the patient has a problem, then it was a rehabilitation opinion. If on the other hand he was simply sent for an assessment, then it is part of the tort action. The insurance companies do not differentiate between the two. We recently got a phone call from an insurance company. They told us quite clearly that they always thought rehabilitation was just a lawyer's way of making a case. They do not separate treatment from the tort action. I think a lot of people make that confusion. Those of us who treat it would like to separate that.

Mr J. B. Nixon: You are aware that the government, the superintendent of insurance specifically, now has no power to deal with delays in payment by insurance companies, has no power to deal with what might be considered unfair practices by insurance companies.

Mr Walton: We are well aware of that. We were in touch this week with their office over a case we saw in July on a physician referral. We have had a separate letter written by the

physician. The insurance adjusters even refused to let us know what the insurance company was.

Mr J. B. Nixon: Are you aware that practices such as that specifically and others that you have alluded to will become unfair practices under the Insurance Act, under this new system, under the bill, and that the insurance commissioner, he or she, will have specific power to intervene and impose new behaviour on insurance companies, to force them to pay, to fine them, to take them to court, to seek injunctions and to make them do what they should be doing?

Mr Walton: I would just like to ensure that the patient gets treated while everybody else is fighting.

Mr J. B. Nixon: Yes, I am with you.

Ms Oddie Munro: On page 2 you indicate that the proposed legislation provides ample funding for treatment of varied disorders—head injury, post-trauma, psychological and chronic pain. Then on page 4 you say, "The proposed legislation does not ensure accessibility of treatment funds," and you underline the fact that rehabilitation is extremely important.

I am referring to the regulations that go along with the bill and just noting for your attention the fact that psychological, emotional and mental injury is referenced several times in the definitions. In addition to that, I think the minister has made clear that the no-fault benefits, the rehabilitation moneys and coverage, will flow, as will the money for lost income, so my understanding is that there is no difference there.

Mr Walton: Unless there is a dispute, my understanding is that is correct.

Ms Oddie Munro: Okay. The other point I want to make is that when you take a look at the right to sue, I think people have focused on the fiscal aspect. When part of that clause is an "or" which looks at the physiological aspect—I do know that the whole field of psychological rehabilitation and psychology and psychiatry is fraught with—I mean, the whole field of vocational rehabilitation is probably only 20 years in coming up to the challenges that have to be made. Do you not feel, when you look at a physiological correlate, that this will relate in a significant way to what you are calling "pain and suffering"?

Mr Walton: Are you asking whether I feel there is a physiological substrate?

Ms Oddie Munro: Yes, because in my mind, it does. In my mind, you can make—I suppose we will have to keep a close watch on the body of knowledge that will amass once clients are treated in this way. But I am wondering what

your opinion is of any physiological correlate with pain and injury, because that is what they say they are going to do and accept.

Mr Walton: Is there a physiological substrate for pain? That is a difficult question. Certainly they have researched pain for a lot longer than the 20 years and we understand some of the physiological mechanisms associated with it. Whether it is a pathology that turns on or turns off the system is another matter. I guess my concern here is that certainly we are getting closer to that, but what do we do with all the patients until that comes up? What we have essentially done in this legislation is say, "We're going to penalize you financially until somebody finds a way to find a physiological substrate, and until somebody does, you're going to pay the price."

In terms of accessibility of funding, my concern was not that the legislation includes a lot, because it does and it is very good in that sense. What it does not do is take into account the fact that the insurance industry and the lawyers have been in an adversarial process for so long that even when we have people such as myself get in touch with them, they tend to assume that adversarial role. Their tendency is always to look for a way to avoid paying for the treatment. I do not think that will change. We will end up with a tremendous number of disputes.

I think it was summarized best by an insurance manager who toured our clinic recently who essentially said: "We work by the golden rule. We have the gold, so we make rules." That is the attitude and the manner in which they deal with patients.

Ms Oddie Munro: But the independent assessment of the client, the people in the car or whoever else is involved will be done with professionals in whom we invest a lot of trust, and also it gives significance to the kind of training you have had. Do you not think that out of those people who will be making the assessment—you probably will be involved yourself—we will come out with a fair treatment and accessibility measure that will benefit the client?

Mr Walton: I think what will happen is that you will have the organizations that specialize in doing defence or plaintiff assessments still there doing exactly what they are doing now. I would like to ensure that the patient gets treated while that is going on. In that way, treatment will still be there, and second it will tend to facilitate resolution of those disputes.

The Chair: Thank you for your presentation.

We have representatives from State Farm Mutual Automobile Insurance Co, Cliff Fraser and Harry Brown. Gentlemen, you have half an hour. Use that as you see fit, but we recommend, if you could, 15 minutes for your presentation to allow some time for some questions, answers and discussion. We are in your hands.

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STATE FARM MUTUAL AUTOMOBILE INSURANCE CO

Mr Fraser: First, I would like to thank the committee for the opportunity to appear here. We have passed out a paper covering some of the points we wish to make, but I will not go through the paper in detail. I will just cover some of the highlights because I am sure you have read it beforehand.

First, a little bit about State Farm. We are the second largest insurer in the province of Ontario. We have been here for many years. We insure currently slightly less than half a million automobiles in this province. We are an American company, in fact the largest car insurer in the world and insure some 32 million automobiles in total in North America.

Of the items I would like to touch on, the first, which I think is paramount to the committee activity and I believe the reason we are here today and this subject has been debated for so long, is affordability. I think affordability and availability are very closely tied together. If there were no problem with the cost of automobile insurance I really question whether this whole debate and exercise would be going on.

It is not just an Ontario phenomenon, but is going on throughout the United States. We are all aware of the California experience and it is popping up in other states. Some states seem to have solved the problem in some respects, and I will touch on those states, specifically Michigan and New York. We insure well over a million automobiles, in both New York and Michigan, and have had some experience with the no-fault program in those states.

The next section of our report touches on a balanced no-fault program. It is a term that Keeton and O'Connell, sort of the fathers of no-fault some 25 years ago, have consistently returned to. As you raise or lower benefits, you raise or lower premiums. It is as simple as that. There is no such thing as eating your cake and having it too. I am sure every committee member is very much aware of that.

I sensed, sitting here yesterday and part of today, that a lot of the discussion is somewhat

isolated in that we are talking about people who have serious injuries. The program is not going to change that at all. People have injuries resulting from two cars hitting each other. Insurance will not change that fact. Insurance maybe can help in some ways get them better quickly through financial assistance, but beyond that there is not much we can do to solve the agony, the pain and the suffering of car accidents. I will maybe come back to that later in some personal comments. So the system has to be balanced between the coverage you provide and the cost the public seems satisfied to pay for.

We then talk about consumer acceptance. It is interesting to note that the hearings that went on with the Ontario Automobile Insurance Board here, under Mr Kruger's direction, had representatives from Michigan and New York. Those people said very specifically that while they had problems with the threshold no-fault programs in those two states and that nothing is perfect in the world, they had no preference whatsoever for returning to the tort system we know today in Ontario.

Some questions have been asked about the moderating effect of cost under a no-fault program. I might mention, from just listening a few moments ago, that no-fault to me is no-fault. I do not understand the references between threshold and no-fault as though they are two different subjects. No-fault is an American term. There is no such place in the United States that does not have a no-fault program without a threshold. I have some difficulty talking about threshold programs as though that is not no-fault. I guess it is only semantics and possibly degrees.

In New York, you can see from our submission that over a 10-year period the consumer price index was going up at the rate of 63 per cent. I hasten to add that in the United States they do not have a medical program such as we have in Canada and particularly in Ontario, so in these two states the services, the insurance industry purchase for our policy holders, were going up much faster than the general rate of inflation.

If we are all familiar with the high cost of medical services in the United States, I think we could agree on that. Yet the price of car insurance only went up 38 per cent in New York over that 10-year period and 32 per cent in the state of Michigan, practically half the rate of inflation without even considering the types of products and services the insurance industry buys.

We then go on to comments about faster payment. That to me seems rather academic. With the teeth that permeate throughout Bill 68,

the benefits have to flow quickly and there are safeguards there to monitor and penalize insurers if they do not comply with the legislation once it is passed.

In another section we talk about certainty. There has been so much said about this that you could write books about it. Regardless of what we say about the tort system, it is unpredictable for many reasons. One thing about the no-fault program, at least about the benefits that are paid by the first-party system beneath the threshold, is that it is very predictable. It is contractual. If the company does not live up to the contract, there are avenues to pursue that, either through arbitration or through the courts and things of that nature. The certainty is there where it is definitely not in the tort system today. It has often been referred to as a lottery or Russian roulette. I have seen these cases for some 40 years personally and I could speak to that rather specifically.

Service: We think this is rather key. Today people buy insurance and our agents sell insurance in their home town. If they have the misfortune to have a car accident with damage to their vehicle and also injuries to themselves, often they come to our agent for help. We are in the position of saying: "The accident was not your fault. Go against the other person." He is dealing with another insurance company he knows nothing about and did not choose in an adversarial atmosphere. He often has to retain a lawyer to represent his views and goes through this traumatic experience, lasting many years sometimes, to get help for something he has paid for.

The customers do not understand this. It is a crazy system. I said this before the Kruger commission. If you set out to design a system that makes less sense than the system we have today, you would be hard put to do it. I could get emotional about that subject, but I will save that.

The care giver fee schedule. We feel there will be considerable numbers of industries springing up in the medical field. Some of them are there currently. That will serve a very useful purpose in providing care for people outside the area of OHIP and that type of thing. We feel some of these services should be regulated. Maybe it is beyond the scope of Bill 68, but we have put that in our brief to mention that it is something you may want to fine-tune when you get to your clause-by-clause reading.

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Now, if I may, I would just like to give some personal observations, although I realize I am

here representing State Farm Insurance. I have been acquainted with this subject for 20 years. I chaired the original no-fault committee through the Insurance Bureau of Canada in 1970. I sat through Allan Leal's study on automobile compensation in the 1970s. I appeared before Dr David Slater. I remember the Ontario Law Reform Commission. I guess that was in the late 1970s with Breithaupt and a few of those good folks. We then moved on to Justice Coulter Osborne. I was an adviser to Justice Coulter Osborne. We just recently completed a year or two with the Ontario Automobile Insurance Board and Mr Kruger, and we gave representations at that board on the subject of no-fault insurance.

I just give you that information that I am not a casual observer on the subject of no-fault automobile insurance. What I hear a lot is that there is such a focus on the Toronto Star horror stories, and if that is objective journalism I would hate to see the rest. But you hear about the horror stories that we seem to talk about, and frankly, car insurance is not going to change horror stories. There will still be people very seriously injured who require all kinds of help and understanding.

Basically what we are talking about is that the public finds the price of car insurance too expensive, and I guess the public has a threshold level too in what it pays for certain commodities and products. If you look upon the insurance product as a see-saw, on one side you have the coverage and on the other side you have the price. If you give more product and, for example, lower that threshold—and I will speak about the threshold in a moment—the price goes up. It is as simple as that.

We can work with any product. We work with a product today. We have done it for many, many years. We have had good years and bad years. We can work with whatever product government decides to bring in. Our original position was for total no-fault. While I do not like aspects of government insurance in Quebec, it is interesting that it brought in no-fault without a lot of hysteria. It came in overnight and has worked for many years and seems to work quite well.

In Ontario the threshold has been struck by the Ontario government. We think it is a good threshold, and I would suggest to you that if one word is changed in that threshold, so that it opens it up, that may be fine, but the cost will correspondingly go up. I guess you have to decide what your charge is and whether that fits in with the overall social program that the

motoring public of Ontario seems to be calling for.

One side of the program that has not received too much attention from the portion that I have sat in on here is the vehicle damage side. Still about half of the dollars we pay out for insurance go out for fenders, not bodies, and I really believe that the direct payment system that this Bill 68 brings into Ontario is very positive. You deal with your own insurance company, you will get your car repaired quicker. The insurance company knows what product it is going to be repairing, so the pricing is more accurate. I think they talked about this yesterday a bit. While the, I hate to use the word "glamour," but the exciting side of the business always seems to be focused on the injury side, equal dollars are paid out for vehicle damage.

The threshold: We all want to get people well who are injured in car accidents. It is to the insurance company's advantage because it does mitigate some long-range expenses, and that will be 10-fold under this new program, because they can go on for a lifetime in many cases. So anything you can do to get that person well again is in the best interests of the injured party, as well as the insurance company that is paying the bill.

So I see a much-enhanced activity of rehabilitation and those kinds of medical services, where possibly we had been a little derelict in that area. Certainly we found that out in our study when we were working with Justice Coulter Osborne. If you look upon claim payments as a pyramid—and in Ontario State Farm alone had a little over 10,000 bodily injury claims in 1989; we had close to 175,000 total claims—at the very top you have the very serious personal injury claims. They will still be in the tort system, so you can say that in some ways they have the best of both worlds, full tort and full first-party compensation up front.

But as you get down the pyramid, what happens today is that all injuries, real or otherwise, have access to the tort system. This is where the dollars are and the reason insurance today is so expensive. It is not because of the dramatic cases. The system can take care of those. There are not that many of those, although listening to a lot of the opponents of this legislation, you would think they were a daily event, but there are really not that many very, very serious cases.

The tens of thousands of them are at the base of the pyramid, and what happens is that it is the leverage of the litigation system that causes us to overpay those claims because of the implication

of the cost of litigation. Often, we talk with our claims people and they look at a case where there is a few hundred dollars of expenses. The plaintiff is asking for maybe \$5,000. Nowhere in the world is it worth \$5,000. Everybody has a little pain in pretty well everything we do in life. We end up paying \$2,500 or \$3,000 because going the distance through the legal system makes it too expensive. When you add those extra payments to all those little claims, and there are thousands of them, that is where the dollar savings are. We want to make everybody whole. Insurance is supposed to be indemnity, not a jackpot for pain and suffering.

There are many aspects of life where you do not get any compensation for pain and suffering. Often I think that when we talk about the tort system we lose sight entirely of the fact that theoretically half of the people are innocent and half of the people are at fault. All the conversation I have heard here in the past couple of days is sort of based on the premise that everybody is innocent and everybody gets everything, and tomorrow he will get nothing. That is not true. We win a few cases too, and I have seen many, many cases of people seriously injured and they do not get a dime and are often stuck for legal expenses because sometimes we are pretty good. That is not right, but that is the system.

This program is more humanitarian, and we are saying that all people will be treated equally and all people will get indemnified completely and all people will have up to \$1 million of access for medical costs and medical care and rehabilitation, etc. Frankly, if they ever break through that, they are going to be in tort anyway, because they would be pretty seriously banged up.

1510

I think we have to get it into context. Horror stories do not impress me. There will always be horror stories. That comes from two cars hitting each other. I do not care what system you devise, you are not going to stop people from injuring themselves or being injured by other people. But it is a certain sacrifice that we make towards the masses of people and we devise a system that is better for the average person, rather than the system today, where a few people get a lot of money, so everyone else has to go through this protracted, agonizing process of the adversarial system, with spectators hovering around and so on and so forth.

I think this is a better system. I support Bill 68, as our company does. We did go for complete no-fault, but of course we can live with any product the government brings in.

We are now subject to questions.

The Chair: I have Mr Laughren, Mr Kormos, Mr Furlong, Mr Nixon and Mr Runciman. We have six minutes total.

Mr Laughren: You state on the bottom of page 1 that if the threshold were lowered, there would have to be either appropriate premium increases made to compensate for the additional payments made by insurers or appropriate reductions made to the mandatory benefits. Have you crunched out the numbers that would indicate how much (a) the premiums could be reduced or, more important, (b) the mandatory benefits could be increased if you were working with a pure no-fault system?

Mr Fraser: Our actuarial people did some work on that. Frankly, I cannot quote you specifics, but I remember the general message. Total no-fault really did not give you that many additional dollar savings. You were not much different than this particular threshold, so you did not have that many savings to really enhance the benefits considerably. There were some, obviously.

Mr Laughren: Because of the pyramid effect.

Mr Fraser: Yes. There were some, but I cannot quantify that. Frankly, I recall we did give that kind of information to Mr Kruger's commission about last summer.

Mr Kormos: I should note that my notes indicate that you only contributed \$1,800 to the Liberal Party back in 1987. Was there a problem? If I am wrong about the figure, let me know.

Mr Fraser: What reference in Bill 68 is that?

Mr Kormos: Quite frankly, around \$105,000 worth of reference, but what I want to do is read you a comment—

Mr Fraser: Not applicable to State Farm—\$105,000?

Mr Kormos: Your share of it was only the \$1,800. That is why I wondered if there was a problem there that yours was a lesser contribution than many other insurers.

In any event, I want to read to you from page 479—oh, there is more—of Osborne's report. He is talking about Michigan and its threshold system and its so-called no-fault component of that, and I read this because a lot of people are saying that it is going to be so nice. Some insurance companies have been in here saying how nice it will be that they will be able to deal directly with their clients without lawyers representing those same people, but Osborne wrote:

"There is also a considerable amount of first-party litigation...in which an insured sues his own insurers, usually over the nonpayment of no-fault benefits. This is to some extent to be expected because first-party no-fault benefits are relatively generous. Where there is more at stake, there is more to fight about. One Detroit law firm has seven lawyers who devote their practices exclusively to first-party automobile insurance litigation. Interest penalties do not appear to have been a very effective deterrent to abuse of the first-party system."

Do you agree with that statement by Osborne?

Mr Brown: It is true there is a substantial amount of litigation over accident benefits, being medical and rehabilitation, in Michigan. The standard, I believe, is "what is necessary and reasonable," or words to that effect.

The object of Bill 68 is to try to get around that problem with this legislation by introducing the mandatory mediation provisions and the arbitration provisions and the market conduct provisions and the enhanced powers of the superintendent of insurance. The object of it is to try to say to the insured who says, "I'm not getting what I want"—they have adopted, as you probably realize, the New York model of mediation and arbitration, which works reasonably well.

Mr Kormos: I trust you are hoping that victims will be going to those panels and boards without legal representation so that maybe you and they can sort of work it out to their benefit, after you have already refused them those benefits, which is why they have to go to those boards and panels to begin with.

Mr Fraser: I think there will always be disputes. I had mentioned we had 170,000 claims in Ontario last year. Many are disputes on material damage, let alone injury—the paint does not match, the fender, the car door does not close the way it did yesterday. We have disputes in fire insurance. We work our way through the system. I do not think it is too valid a point. We felt that there would be some aspect outside the judicial system that might expedite those disputes, but that is up to the drafters of the legislation. But yes, there will be disputes.

Mr Furlong: Some of the complaints we heard yesterday, and certainly the complaint I hear most in my constituency office, have to do with motorists not being able to purchase product and being forced into the Facility. I wonder if you might comment on how this legislation, from your company's perspective, would have an impact on that. It will mean that you will be accepting more risk, I suppose. We heard about a

schedule of risk, and I do not know how it applies specifically, but I just wonder if you might comment on this legislation as it applies to the Facility.

Mr Fraser: I will give you a little background about what we are doing, and I do not know whether we want to accept more; we might get indigestion. In 1989 in Ontario we accepted 88,000 new pieces of automobile insurance in this province. As for the Facility Association, we have 15,000 risks through State Farm in the Facility out of about 500,000 policy-holders. That is 2.9 per cent. I do not know exactly what ratio the Facility is today to the total marketplace, but I suggest it is over five per cent. So we are about half. I think that tells you that we are taking new business, close to 100,000 pieces of it last year, and we are not pushing a lot of it into the Facility.

On the other hand, maybe we are not too astute business people, because we had a net loss. It is nothing that I am particularly proud of, but we had an underwriting loss in 1989 of \$90 million. We made \$60 million in investment income—a before-tax bottom-line loss of \$30 million last year. That is one year. We have had many years of making money. Sometimes people ask the question, "If you are losing so much money, why do you stay in the business?" I think the only answer to that is that we are in the business of selling insurance, and we sell insurance, all lines of it. We have a life insurance company and a fire insurance company, and we sell all types of insurance.

It is like a grocery store: If you stop selling milk, not many people are going to come into your store, even though you may be losing money on milk. If we stop selling car insurance, we are not going to get into those family households, because in spite of tied selling—and we will respect that legislation; I think we do today—people still like to be insured for most of their insurance with the same company because there are some overlapping coverages between liability, auto and so forth. So we feel we are keeping the marketplace open.

As companies return to profitability—and "profit" is not a dirty word. You need profit to increase business. For every dollar of premium we write, we have to send a dollar to Ottawa to keep our licence. Even for a simple aspect of a rate increase—not adding business, just increasing rates, say, 10 per cent—you have to find that money to finance that rate increase with Ottawa. Where do you get that money from? That is profitability, and if you do not have a surplus that

could afford you growth, then you get into a market crunch like we have today.

So the simple answer is, if no-fault insurance does return the industry to some stability rather than the ups and downs that we have had over the past many years of big profits or big losses, but makes it more consistent, as we have seen in New York and Michigan, more predictable, the market will be there—not overnight, not on 1 June; it will take a while to settle in. I think you will see the market settle down and this subject will be long gone from the political process.

1520

Mr J. B. Nixon: I would like to put to you a quote from Mr Justice Hall of the Court of Appeal of Manitoba, 1982, where he speaks—he seems to echo your thoughts—about the tort system. He says, "...in my opinion it makes no sense at all to have in place a modest and predictable system of compensation for injured workers and victims of crime while at the same time tolerate a risky, difficult and wholly irrational system of court-sponsored assessments for persons injured by reason of a motor vehicle accident on a highway." That is a judge of the Court of Appeal.

Mr Laughren: Sign that guy up.

Ms Oddie Munro: This morning the Insurance Brokers Association of Ontario made reference to tied selling and unfair trade practices and a comparison with balanced portfolios. How does that relate to the situation you are referring to where you say the \$30-million bottom-line loss would be compensated by your profits in other areas? The brokers are saying they would like to see an elimination of tied selling and portfolio and balancing rules. How do you relate to that statement?

Mr Fraser: Tied selling, to me, means saying to a customer, "We'll take your car insurance, which is unprofitable, if you give us your home owner's insurance."

Ms Oddie Munro: So tied selling is basically customer-related. You are talking about insurance being offered in a variety of ways not necessarily tied to the same customers.

Mr Fraser: There are two ways you can perceive it, the company-initiated tied-selling concept or the consumer-initiated. Most consumers like it. They want, as we found out anyway, to have their insurance with one company. I do not think Bill 68 implies that is tied selling. But when a company goes out, and we do not do this, and says, "We won't take your car unless we get

your home owner's insurance," that is tied selling and that would be illegal.

I think the brokers are getting at a different aspect. We deal through direct State Farm agents, so we only take business from our own agents and we take all their business. I think what they are inferring is that a broker would have six or seven companies, or maybe more, and they want that broker to have a balanced book of business, so they have to give them so much home owner's insurance and so much car insurance. Through osmosis, that is an aspect of tied selling. I could not comment on that because that is not our bag.

Mr Runciman: I enjoyed that quote Mr Nixon put on the record. Why only accidents? Why not compensate for any misfortune that befalls you? Pure socialism from Mr Nixon; Mr Laughren was quite enthused about that comment.

Mr Kormos: Whose socialism? Not the New Democratic Party's.

Mr Runciman: Mr Fraser, you talked about your company suffering a \$30-million loss in this past fiscal year on the auto insurance side. How does that compare with others? Are you the major loser in the insurance field in Ontario that you are aware of?

Mr Fraser: The figures are not out yet for the companies and we do not hear our competitors' figures until about March. We obviously have not closed our book yet.

Mr Runciman: We had one here this morning saying it made approximately \$5 million this year.

Mr Fraser: Before tax and after investment income?

Mr Runciman: I cannot recall. I think it may have been.

Mr Fraser: I think there is a key difference between State Farm and other insurance companies. We have several companies, by product line. When I am here representing State Farm Mutual Automobile Insurance Co, that is all that is written by that company. I think every other company, when it is here before you, has a mixed bag. It is all in the same company, so the investment income cannot really be tied back to car insurance, home insurance, burglary insurance or plate glass insurance and so forth.

Mr Runciman: How did State Farm do in terms of the total corporate picture? What was your bottom line?

Mr Fraser: I do not know yet. We will have a profit in State Farm Fire and Casualty Insurance

Co. I do not know the magnitude of it, but we will have a profit there. That is basically fire insurance, home owners'. Life insurance always makes money.

Mr Runciman: I find it passing strange that you are suffering such significant losses. We saw the Globe and Mail article the other day where losses are dropping dramatically in the auto insurance area. We had Royal Insurance before us this morning saying it is going to make \$5 million. It raises the spectre of the situation in the past where we had insurance companies out trying to get business, if you will, and lowering their rates to the point where they were not perhaps in the best long-term interests of consumers in this province. You have heard that story yourself.

Mr Fraser: Yes.

Mr Runciman: No one seems to have been arguing against it.

You have some quotes in here about the New York and Michigan experience of your firm. What is the Ontario experience to compare with that? Do you have those figures as well?

Mr Fraser: The statistics you mean?

Mr Brown: For 10 years?

Mr Runciman: Yes.

Mr Fraser: Price-wise? I could get them. I do not have them with me. I think over the last two or three years, since April 1987 when the rates were more or less frozen, we went up very similar to Mr Elston's statement on Monday because we took the maximum we could get.

Mr Runciman: Yes.

Mr Fraser: Frankly, we are about 28 per cent underpriced today at State Farm.

Mr Runciman: I think it would be useful, since you are giving quotes here from New York and Michigan, if you could supply that information for us.

Mr Fraser: I would be glad to.

Mr Runciman: It would be helpful.

Mr Fraser: Do you want to go back 10 years?

Mr Runciman: You have given a 10-year figure. Why not give the same figure for Ontario?

Mr Fraser: We will try to do that.

Mr Runciman: I am not sure of the year, but the insurance industry, through the Insurance Bureau of Canada, recommended what they described as a smart no-fault plan. Was your company supportive of that?

Mr Fraser: We were; not enthusiastically, but we were.

Mr Runciman: Not enthusiastically. We could go into a lot of specifics, but that smart no-fault included the right to sue for excess economic loss and did not eliminate psychological injury. You are saying reluctantly, but you did support it at the time. I am wondering why then and not now? Specifically, we will just deal with one element of it and that is the psychological injury element of it. Why was that appropriate just a couple of years ago and now you do not feel it should be incorporated in the threshold?

Mr Fraser: I participate on the board of the Insurance Bureau of Canada. I did not participate actively in the development especially of the no-fault program you are talking about, smart no-fault. Our thrust was complete no-fault, as I identified earlier. Between the world we know today and no-fault, we would practically pick anything between that and what we have today as a preference. Naturally, smart no-fault would be preferred by us to what we have today. So you get into degrees and there could be many different programs.

Personally, I do not have a big quarrel with compensation for economic loss not recoverable under a no-fault program. I do not have a quarrel with that. That is in the government bill and that is fine.

On the other injury you refer to, the problem is that some of those injuries are so subjective that no one has really come up with a verbal description to be able to capture all the head-type injuries. As we open that up, I suggest to you we are right back where we started and we will be paying all of these small claims because people have headaches and things like that.

Mr Runciman: I understand your argument and your position.

Mr Fraser: Yes.

Mr Runciman: I do not agree with you, but I am just drawing a parallel between the position you took just a couple of years ago with smart no-fault.

Mr Fraser: Yes.

Mr Runciman: There is some additional information I would like to have, if I have a minute, Mr Chairman.

The Chair: Yes, a minute.

Mr Runciman: When we are talking about the New York and Michigan experiences, I think it might be helpful to us as well if you might indicate the profitability of the State Farm operations in both those states. How have they done with respect to the bottom line during their

operations in those states under no-fault regimes?
1530

Mr Fraser: I could get that. Obviously I do not have that with me now. It is public information in the United States. We file statements in each state. I will get that for you.

Mr Runciman: I assume they have done reasonably well. That is the case, is it not?

Mr Fraser: I do not think so in New York. I think Michigan is okay. I do not think New York has done that well. They have some horrendous problems in New York state.

The Chair: If you could get that information to the clerk we will see that it gets distributed to the committee members. Thank you for your presentation today.

Mr Fraser: We will take it as an obligation.

Mr Laughren: You contributed to the Tories, did you not?

Mr Fraser: I have gone to many Liberal dinners and I have gone to many PC dinners and I enjoy them thoroughly and plan to continue. I have never gone to an NDP one because I have never been invited.

The Chair: See; there you go. Mr Kormos may add you to the list.

From the Advocates' Society, Mr Jarvis and Mr Raphael. Gentlemen, you have half an hour. I suggest a possible 15 minutes in presentation and 15 minutes for some questions and discussion from the committee members. The clerk has circulated a copy of your submission. We are in your hands for the next half hour.

ADVOCATES' SOCIETY

Mr Jarvis: I would like to introduce myself. I am Peter Jarvis, the current president of the Advocates' Society, which as you know is an organization of trial lawyers of the province. Our membership is currently about 1,800 members. It represents people who specialize in civil, criminal and administrative litigation and our interest in this matter is therefore obvious. With me on my left is Ted Rachlin, past president of the society, who will have some remarks for you, and on my right Burt Raphael, another past president of the society who also will share some comments with you.

The Advocates' Society has a long history of interest and involvement in discussions in this province relating to automobile insurance. I think it is fair to say that our contributions in the past have been viewed as being constructive and in the public interest. We were never consulted about this specific bill before it was presented.

We have reviewed it in some detail and our position is that this legislation cannot stand and we oppose it totally. The legislation will hurt and not help people.

I personally have spent much of my career working with the victims of the carnage on our highways. This carnage is going to continue. If this bill is adopted, the victims of accidents will suffer personally and economically in the future.

Our analysis of the legislation is that the only people who can conceivably be characterized as winners in the legislation are the drivers who cause accidents. Only they can be said to benefit. We will no doubt be accused of expressing our self-interest in putting forward these views. The provisions of the bill stand on their own and the meaning of them is clear. The truth of our comments about this bill should not be diluted by the convenient but irrelevant technique of an attack on our motivation.

It is clear to us that the bill will create legal uncertainty leading to years of litigation to resolve judicially the meaning of the bill's wording. The experience of other jurisdictions where legislation such as this has been passed will be repeated. This will lead to excessive cost to individuals, our economy and our government, and to years of uncertainty, particularly for the victims of accidents.

The cost of insurance will inevitably rise and fair compensation will no longer exist except for those killed and those injured in the most serious and devastating way.

I now propose to ask Ted Rachlin to address you, dealing with some aspects of the bill. I will remind you that previously we had sent to all of you copies of Mr Rachlin's paper on the bill which is a concise description of the legislation. If any of you require additional copies, please let me know and we will be happy to provide them to you.

Mr Rachlin: I am here today as a representative of the Advocates' Society, but I speak not for the society nor for lawyers; I speak, rather, for innocent accident victims to try to get some facts straight.

There are many misconceptions and misrepresentations about the present system. The proponents of Bill 68 say that under the present system victims must go to court for compensation, that they must wait for interminable years, that the system is a lottery, etc. Nothing could be farther from the truth. The vast majority of injury claims are settled today by the accident victims directly with the insurance companies involved without the intervention of any lawyers. Only two or

three per cent of the injury cases actually go to judgement at a trial and those cases set the standard for all the others that are settled. The fact that an accident victim has the right to go to a lawyer and to go to court means that the insurance companies are willing to settle on an appropriate basis.

Accident victims today do not have to wait until the case is settled before they get any payment. Our no-fault plan that we presently have makes payments the same as the payments under Bill 68, though not as generous as the payments under Bill 68. But people get payments right along if they are entitled to them. In addition, very often people get advance payments from the insurance companies of wrongdoers with respect to the losses that they have that are not covered by the no-fault plan. The insurance companies do that not just to be nice, but also to avoid the prejudgement interest they will have to pay if they do not make those payments.

Bill 68 takes more away from accident victims than it gives. The most sinister part of it is the threshold and that is what I wish to address in the next few minutes.

Under Bill 68 certain expenses for financial losses will be paid under the no-fault provisions, but nothing at all will be paid for human losses, such as pain and suffering, loss of the quality of life, etc. Those are important things and they have been recognized by our law for many years. Accident victims presently today are compensated on an appropriate basis for those losses under the present system. Bill 68 will give them nothing for those losses unless their injuries are such that they can cross the threshold that is set out in the bill. For an injury to pass the threshold it must be a "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature."

It is very easy to say it must be a permanent serious injury; it must be a lot more than that. Look at the language. It is a tough test with a lot of branches. It means that to qualify to pass the threshold an injury must be all of these: It must be an impairment of a bodily function. That is more than just pain, more than just suffering. There has to be an impairment of a bodily function. The impairment must be permanent, not temporary, not just for a year or two or three, but for ever. That is what permanent means.

The impairment must be serious. The bodily function that is permanently impaired must be an important one, not just an unimportant bodily function but an important one. The injury

causing the impairment must be a continuing one. Last, the injury must be physical, not mental or psychological in nature. The injury must pass all of those tests before the person can get one cent for any damages that he has beyond what Bill 68 pays.

About 95 per cent of injuries will not pass the threshold. I do not think there is much room for dispute about that. Those people will not get one cent for their pain and suffering or other human losses. They also will not be able to claim any financial losses that they have over and above what Bill 68 pays. That is just not fair. People with broken arms, broken legs, lengthy hospitalizations, surgery, scars: for the most part these people will not pass the threshold and they will not get any compensation for their pain and suffering. That is not fair. Who would have believed that such a thing could happen in civilized Ontario?

How will you answer your injured and maimed constituents who come to you and ask why you took away their right to compensation for pain and suffering? How will you answer the student who is temporarily disabled during exam time, and as a result loses a year of school and has his entry into the workforce delayed for a year and whose injury is not serious enough to pass the threshold and he does not get compensated for that year off school? How will you answer the businessman or farmer who loses his business or farm as a result of a temporary incapacity and gets no compensation for this because his injuries do not pass the threshold?

Consider the plight of the injury victim if Bill 68 comes into force. He will want compensation for his pain and suffering. He will go to the insurance company. Under the present system most of these claims are settled pretty easily and pretty promptly. Under the new law, in almost every case, the insurance company will say: "Sorry, you don't qualify. We don't pay anything for pain and suffering."

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The victim will go to a lawyer. The lawyer will inquire about the extent of his injuries to determine whether or not he passes the threshold. The lawyer will charge for his time and advice. In many of these cases it will be perfectly clear that the injuries do not cross the threshold, and the lawyer will tell the client that, but in many other cases it will not be so clear. The lawyer will think: "We'd better get medical reports to see what the future holds for this person. Maybe there is something more wrong with him than meets the eye at the moment or maybe there will

be something more wrong, so I'd better get some medical reports."

Those reports, ladies and gentlemen, are expensive. They routinely cost hundreds of dollars. Today lawyers finance that expense, for the most part, because they know that eventually the injury victim, the client, will get paid and the lawyer will be repaid. But that will not happen under a threshold system, because the injury victim may end up not passing the threshold and will not get anything, so he is going to have to come up with the money for those reports.

In cases where it appears that the injuries might pass the threshold, the insurance company will have its own medical examinations. It will get its own medical reports because it will be interested in showing that the injuries are not sufficient to pass the threshold. Probably the insurance company will retain a lawyer as well. All this is more expense that is built into the system and is expense we do not have today because it is an expense directed to the issue of whether or not the threshold is crossed. Some people like to say that lawyers oppose this bill because it will cost them business. Clearly the threshold will generate an awful lot of business for lawyers in this province.

The new system really will be a lottery. A person may have an injury that might be worth, say, \$50,000 or \$100,000 if it crosses the threshold. If it does not cross the threshold, it is worth zero. The line between whether or not it passes the threshold will be so fine that the result will be as uncertain as the toss of a coin. This is the position that you are putting the people of Ontario in if you pass this bill.

This threshold rubs salt into the wounds of injury victims. Any one of us could be an innocent accident victim. Would you like it if you or a loved one were lying in a hospital with a broken leg and surgery knowing that the drunk driver's insurance company would not have to pay you anything for pain and suffering? I say to you, "Do unto accident victims as you would have done unto you and your loved ones because we don't know who will be the next victim."

I know the opposition members of this committee recognize the unfairness of the threshold and they have spoken out against it. To the government members of the committee, I plead, "Please have the courage to recommend that the vicious threshold be deleted from this bill."

Mr Raphael: On Monday of this week the Honourable Murray Elston, the minister responsible for Bill 68, is quoted as saying that the bill

will look after the interests of the majority of Ontarians and not the special interests of a few. He describes the end result of the proposed bill as product reform. In the few moments available to me I would like to address the real cost to the taxpayer, the consumer and the victims of this plan as proposed on the basis of premiums being held to eight per cent in urban areas and no increase in rural areas.

The first issue is that every employed victim is being asked to waive his first week's loss of income. The minister at no time mentions this very important consideration as an element of premium reduction. If the average industrial wage is \$25,000 a year, then there is, in effect, a \$500 deductible that each victim is being asked to absorb. I suppose by eliminating the first two weeks of loss of income for every victim auto insurance, premiums could be significantly reduced with no need to put in all the other draconian measures.

The second point is that unless one crosses the threshold, there is no claim permitted for economic loss over the maximum of \$450 a week unless the victim buys an extra layer of insurance coverage. This hardly suggests a modest premium hike, and unless the victim buys the extra layer of insurance, he will forfeit his claim for economic loss during the time he is off work between the \$450 he gets and what he really earns.

Third, before even qualifying for the maximum of \$450 a week, the victim must first exhaust any private plan that he may have purchased through his own resources or any sick leave plan that he has accumulated, or if he qualifies for workers' compensation, he must go to the board for those benefits. Again, no premium reduction is given to anyone who has those other private plans available.

Fourth, the proposal to eliminate the auto insurance contribution of \$45 million a year to OHIP means simply that in order to suggest a premium saving or reduction, that sum of money will be borne by all Ontario taxpayers and not just motor vehicle accident victims through their premiums.

Fifth, the elimination of the three per cent premium tax on auto insurance deprives the Ontario government of revenue of \$95 million and again gives the impression that premiums are kept down, but if that tax money is required, then Ontario taxpayers will pick up the slack.

Sixth, those accident victims who are obliged to go to workers' compensation instead of their own auto insurers will simply increase the cost of

the workers' compensation system, which again must eventually be borne by the Ontario public.

As my friend Mr Rachlin pointed out, the threshold plan, with its uncertainty, will drive many victims to lawyers for a definition of their rights. Those who do not afford lawyers will have to resort to the Ontario legal aid plan, again a cost that will be transferred to the citizens of Ontario.

On every occasion that I have heard the minister speak, he considers the tradeoff for denying compensation to the overwhelming majority of motor vehicle accident victims by waving the \$500,000 available under rehabilitation and another \$500,000 available for medical and hospital expenses over and above that provided by OHIP.

At the present time, the maximum available under rehabilitation benefits is \$25,000. In my experience of almost 30 years at the bar, the \$25,000 is rarely exhausted and therefore the \$500,000 figure is illusory. To put it another way, if a person cannot be rehabilitated at a cost of \$25,000, then the chances are that he or she will never be rehabilitated, so I suggest that in very rare instances will an insurer be called on to pay anything close to the magical figure of \$500,000 that is being advertised as a tradeoff for compensation for pain and suffering.

The other \$500,000 available under extra medical care is touted by the minister as the other side of the mirror, but its benefits to seriously injured victims are dubious. What the minister fails to say publicly is that the maximum payable under this head is \$50 a day or \$1,500 a month. I query if someone can get competent 24-hour nursing care for that expenditure.

The maximum of \$1,500 a month can be further eroded if the insurer can show that competent and adequate care can be obtained in a group home environment. In the result, the insurer can say to the victim, "Even though you are being allowed \$1,500 a month for the privilege of living at home and being cared for, we will only give you \$1,000 a month because you could be shipped off to a group home and cared for at a lower rate."

In conclusion, to respond to the minister that these are not lawyer-created examples, as he suggests, to frighten the public, these are the plain words of the proposed legislation and its implications and, in my submission, give a hollow ring to the minister's statement that the Ontario motorist protection plan is the best plan for the majority of Ontarians.

Mr Jarvis: That concludes our formal presentation.

Mr Kormos: Very quickly, I should tell you people that yesterday Guardian Insurance came here and presented a brief and made some comments. Among the comments they made was that this new plan, this Bill 68, "removes a major amount of the adversarial claims settlement practice of the current system."

The interesting part of what they say is this—and I say this in the context of what appears to be a lot of lawyer-bashing going on. I should tell you, notwithstanding what I used to do for a living, I sometimes have a little bit of a Shakespearean view of lawyers myself.

Notwithstanding that, Guardian Insurance says this: "In the new plan, we, as insurers, will be dealing directly with our own customers to settle most claims. This will greatly improve the service provided to the insurance buyer." I am wondering if any of you wants to comment on what Guardian says is a great new feature of what this new scheme is going to be.

1550

Mr Rachlin: In a Utopian society no lawyers would be needed at all. In a Utopian society people would go to the insurance companies and the insurance companies would pay exactly what they are supposed to pay and everyone would live happily ever after. But that is not the way the system works.

We have a no-fault plan now, and Mr Justice Osborne said that the record of insurance companies in delivering no-fault benefits is abysmal. I am sure you are all familiar with that comment. It does not mean they are all bad and it does not mean they are all bad all of the time. But it stands to reason that if you have an insurance company that has money to pay out, it is not going to be anxious to pay out any more money than it feels that it has to because it is a profit-making enterprise.

Even under a no-fault plan such as Bill 68 people are going to need lawyers. They are not always going to go to the insurance company and find that the no-fault benefits are immediately paid. It is nice to say that this will happen but that is not the way human affairs work.

Mrs LeBourdais: I would like to direct my question to Mr Rachlin, based on the portion of the brief that you went through. You gave some hypothetical scenarios and asked us how we might answer a particular constituent who had had some tragedy befall him for which he could not seek the compensation for pain and suffering. I would like to turn that around and ask you not a

hypothetical question but one that I was getting a lot in my riding of Etobicoke West a few months ago when the premium escalations were hitting the news strongly.

I have a lot of seniors in my riding and they were calling me and asking me what we were going to do about capping those premium increases because, on fixed incomes, it was going to get to a case very quickly for them that they could no longer pay the premiums and therefore would have to get rid of their cars. Since, in the case of seniors, in many instances a senior will act as a driver for a group of other seniors, I would ask you then, how would you respond to that constituent?

Mr Rachlin: Obviously we all have to be concerned about the cost of insurance and obviously insurance premiums cannot keep going up and up without any limit. There is no question about that. But there has to be a way found to balance the interests, to compensate injured people in some reasonable way and to keep insurance premiums at some reasonable level.

Mr Justice Osborne recommended increased no-fault benefits beyond what is contemplated by Bill 68. Bill 68 adopts certain of the no-fault benefits that Mr Justice Osborne recommended but it does not go as far as his recommendations. It is not as generous as he recommended.

His study, as you know, was an extremely comprehensive one. He calculated that his no-fault benefits could be delivered if there were certain changes in the tort system and premiums would go down. Those changes that he recommended in the tort system were recommended in February 1988. It took the government almost two years to do anything about them. Those changes, by the way, have been supported by the bar right along; the lawyers have supported these changes.

Finally, we saw two bills that were recently introduced that make certain changes in the tort system that will save money, that will save expense without being unfair to injury victims, by cutting out some of the fat, and there is some fat in the system. There are changes that should be made. None of us would say that the current system is perfect.

But with these changes that have just been introduced and that obviously have not had any effect yet because there has not been an opportunity—with these changes that go further, by the way, in restricting tort rights than Mr Justice Osborne recommended, on Osborne's analysis there would be a premium saving and

that premium saving would be even greater because these tort changes go further.

Then we have the other things that the government has done. There is the elimination of the three per cent premium tax. That will help the premium payers. There is the elimination of OHIP's recovery of some \$47 million or \$48 million a year. That is a pretty significant item when you divide it by the number of premium payers that there are. There is the transfer in Bill 68 to workers' compensation. I do not know what that amounts to, but I have seen in the newspaper where somebody felt it was \$25 million. I do not know if that figure is right or wrong, but all these things whittle away at the insurance costs, at the insurance premiums.

The government has announced a major effort to reduce accidents and injuries. Obviously the government thinks that this is going to be effective, or the money would not be spent in doing it. If it is going to be effective, if accidents and injuries are going to be reduced, that is going to cut costs as well. As far as premiums are concerned, with the changes that have finally been brought about, we can have the increased no-fault benefits that Bill 68 contemplates, we can have a reduction in premiums, and let's see how that works out, once it all has a chance to work into the system, and see what happens with your senior constituents as far as their premiums are concerned.

Mr J. B. Nixon: If Mrs LeBourdais has a tough time with her constituents, Mr Rachlin is one of my constituents. We have had discussions on this matter, and I am sure we will continue to have discussions on this matter.

I wanted to put to you, gentlemen, some testimony that Mr Justice Osborne gave when he appeared before the Ontario Automobile Insurance Board. Prior to his appearing before the OAIB, evidence was given that was really uncontested and accepted by the board: that the costs which the insurance companies are exposed to continued to climb well after Osborne had written his report.

They asked him, "Given the continued escalation in costs, what would you do?" He said, "If costs change and premiums are perceived by the public as being too high, which they are, and by the insurance industry as being too low, which they are, and there is legitimacy to both contentions, something has got to give." He was then asked, "What's got to give?" and his answer was, "Look, this isn't the perfect solution, but we have to achieve some solution and the only area

or solution that is workable is somehow reducing third-party bodily injury costs somehow.”

You talk about the tough decisions that government has to make, and I think Bill 68 is evidence of some very tough decisions with a conscious effort to be fair but going in the same direction that Mr Justice Osborne said was the only direction we could go in, and that is reducing third-party bodily injury costs. I would like your response to that.

Mr Raphael: Mr Nixon, it seems to me, for reasons that escape me as one who has dealt with these matters for many, many years and who has had the privilege of serving as an adviser to Justice Osborne, that for some reason automobile insurance has taken on sort of a life of its own. The question was put, “How do you answer premium rises of eight per cent?” About a month ago, Ontario Hydro announced a 7.8 per cent increase in Hydro rates for next year. It was somewhere on page 17 of the Toronto Star and nobody jumped up and down, and I dare say that for the consumer that has more of an impact than automobile insurance.

Yet somehow here we are with thousands of man-hours being spent on this very issue, and other cost factors seem to be ignored by the government and, I suppose, to a large extent by the public. I guess my answer would be that someone has really failed to address the value of automobile insurance, the benefits it provides and the protection it affords.

I suppose Metropolitan Toronto is not the centre of the world, but if it costs someone \$1,000 to park in downtown Toronto to get to work, how horrendous is it that a properly compensated insurance plan costs \$1,000? Maybe people should bite the bullet and recognize what they are buying and what they are paying for.

Mr Runciman: Darned good point.

Mr Laughren: Mine costs \$6,000. How do you explain that?

Mr Raphael: You are a bad driver.

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Mr Runciman: Mr Raphael made some reference to some of the hidden costs of this exercise by the government. The fact is that they are saying they are stabilizing rates, but of course we have seen the expenditures, the tax break and the OHIP break and we have mentioned the Workers' Compensation Board. I think we should also lump in these initiatives on highway safety that were announced with great flourish by the government as part of this whole package. I

am not sure what the total costs of those initiatives are, but I think they are quite significant.

Another element of this that is causing me and my party a great deal of concern is the dispute resolution factor mechanism that the government is developing and what the cost to taxpayers of this province might be in respect to that. I posed this question to the deputy minister in mid-December. What kind of numbers are we looking at in terms of additional bureaucrats? What kinds of costs are taxpayers going to be faced with? What kind of load are these dispute boards going to be faced with?

I guess I have equated it with the situation with rent control, which has gotten out of control in respect to costs, costing us about \$40 million a year now with a two-year backlog. I am wondering if your organization has taken a look at that specific element, the dispute resolution area, and if you have any concerns, you could put them on the record today.

Mr Raphael: The only direct response I can make is that one of my insurance clients went into the field of mediation in a very committed way and again—talk about a cost factor—it was originally proposed that the lawyer representing the victim would come up with \$750, the insurer would pay \$750, so the mediator would be paid a basic fee of \$1,500 to mediate these claims as opposed to letting them go through the judicial system. It would appear that many plaintiffs' lawyers did not see the merit of laying out \$750 when we have a perfectly good working court system. So the insurer turned around and said, “What we will do is, we will pay the \$1,500 to get you to mediation.” I do not know if that really answers your question.

Mr Runciman: No, it does not; it is not dealing with my question really. I know the element you are talking about is the mediation itself, but I am talking about the bureaucracy that is going to support this.

Mr Raphael: All I am suggesting to you is that on a private basis there is a built-in cost of \$1,500 for cases that perhaps could be put into the judicial system and dealt with for the costs that are already being incurred in that system.

Mr Rachlin: If I may make a comment, Mr Runciman, there is a provision in Bill 68 that the costs of all the mediation processes can be passed on to the insurance companies. If they are passed on to the insurance companies, then it means they are just passed on to the consumer.

Mr Runciman: We had that distinction. I asked that question back in December, actually;

the process itself, you are right, is another element of concern being passed on to insurance companies, but I am talking about all of the support services that go along with this exercise that could be quite significant as well.

Mr Jarvis: Somewhere the figure of \$10 million appeared for the first annual cost. I presume that is a repeating cost for all that.

Mr Runciman: The concern here as well is that the government has no idea of what kind of workload it is going to be faced with. They are looking at the New York state experience of about 10,000 to 15,000 appeals annually, but with over six million drivers, it could clearly be significantly higher than that.

The Chair: Thank you for your presentation today.

WELLINGTON INSURANCE CO

The Chair: The next presentation is from the Wellington Insurance Co. Gentlemen, you have half an hour. I would suggest that you try to keep the presentation to about 15 minutes and allow 15 minutes for questions, comments and what your level of financial contribution to the Liberal Party was, because that is what Mr Kormos is going to ask you to confirm or deny.

Mr Wallace: I would like to thank the committee for inviting us here today. It is a pleasure to have the opportunity to comment on legislation that is vital, not only for our industry but also for the millions of Ontario drivers this initiative will affect. My name is Murray Wallace, and I am the president of Wellington Insurance. On my left is my colleague Dwight Lacey, who is the senior vice-president for Ontario, and on my right is Byron Hindle, who is vice-president of actuarial and product costing for the Wellington. We know our time is limited, so I intend to keep my remarks brief.

This is a special year for Wellington because 1990 marks 150 years since our founding near the town of Guelph in 1840. Since that time we have grown to be one of Canada's largest Canadian-owned, shareholder-owned general insurance companies. Over that 150 years, we have offered home, business and automobile insurance to hundreds of thousands of Canadians, most of whom live in Ontario.

Let me tell you that our recent birthdays have not been very happy occasions, at least not as far as Ontario automobile business has gone, because like most other insurers, we have been losing millions of dollars in writing Ontario automobile business. In 1987 we lost \$5.8 million; in 1988, \$19.4 million, and in 1989, to

the end of November, a further \$8.9 million. I would note that these losses are after the attribution of investment income.

From an industry perspective, loss figures like these are clear evidence that the current system does not work. Despite frantic efforts by insurers to cut costs and to eliminate potential abuses, the cost of paying claims has surged ahead dramatically, led by huge increases in the cost of paying bodily injury claims.

Based on Wellington figures, which are consistent with the trends in the industry, premiums increased by 45 per cent over the five-year period between 1984 and 1988. During that same period, claims not including bodily injury increased by 52 per cent, while bodily injury payments rose by an incredible 68 per cent. As if this is not bad enough, our customers are also telling us loud and clear that they are unhappy with the present system. As a customer-driven company, we have the desire and the obligation to recommend changes that are in their interest.

Here is just a sample of what Ontario car drivers are telling the industry, based on an Insurance Bureau of Canada survey conducted near the end of last year. Seventy-three per cent of drivers in Ontario feel the price of automobile insurance is too high. This rate of discontent is the highest in the country—although I should point out that price criticism is a common refrain; for example, 62 per cent of the people in British Columbia think the price is too high, while the figure in Manitoba is 54 per cent.

I am sure we all recall the public outcry when the Ontario Automobile Insurance Board stated that the industry required a 35 to 40 per cent rate increase to ensure survival.

The problem we face together as Ontarians is to design a system that is affordable, ensures availability and is fair to the victim of automobile accidents and also to the drivers who pay the premiums.

But I want to be quite clear on a basic issue. In our view, the situation in Ontario has sunk so low that mere tinkering will not save it. What we need now is radical surgery. A nip and a tuck here, a little tort reform there, simplistic calls for public ownership all fail to address the underlying causes said to be evenhanded.

What direction does Wellington suggest? Let's start by looking for things on which we can agree. We know the automobile is a ubiquitous part of Ontario life. We know that accidents will happen and we know that they will have a

deleterious effect on people, their income and their property.

We know that the premium levels our customers are prepared to pay determine the level of benefits. Reduced to its basics, the formula is fairly simple: the higher the premiums, the higher the benefits; the lower the premiums, the lower the benefits.

I have watched some of the proceedings in the last day or two on television, and I noticed a recurring theme. Many of the interveners want more and higher benefits, but none of them asks how much the drivers are prepared to pay for these additional and higher benefits.

I think we must remember that drivers are already annoyed by their premium levels. As Jack Lyndon of the insurance bureau said yesterday, the private sector could design a system that provided every benefit at generous levels that you could desire. The problem is simply that someone has to pay for it, and the unhappy fact is that we cannot have a Cadillac system at used-car prices.

We also know that the principal reason for rising costs is the huge increase in the cost of claims, particularly the bodily injury portion of claims. And we know that Bill 68 makes a strong public policy statement by endorsing a system of direct compensation for accidents. This says in effect that non-economic loss will no longer be compensated for, because drivers are unwilling to pay for the pain and suffering components of certain nonserious injuries.

The real question is, does Bill 68 herald a future in which the delicate relationship between price, coverage availability and equity can be established and maintained?

We think the bill represents some bold strides in the right direction, but I would like to take my remaining time to suggest some refinements.

Our first suggestion is that Ontario adopt a pure no-fault system with regard to bodily injury. If we are going to hold down premium costs, we have to attack the claims cost problem where it will have the greatest impact. As our figures indicate, the area of greatest impact is clearly bodily injury and pure no-fault is the simplest, fairest solution to this runaway expense.

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At this point, it might be instructive to examine the no-fault experience in Quebec, because it reveals quite clearly what the savings could be if Ontario adopted pure no-fault.

Figures provided recently by the Régie de l'assurance automobile indicate that the average bodily injury claim has increased from \$11,000

in 1979, the year after pure no-fault was adopted, to \$13,467 in 1987, which is an increase of less than three per cent a year.

It is even more dramatic when you look at what happened in the last four years. Between 1983 and 1987, bodily injury payments actually decreased by slightly more than \$300. A two per cent drop over that period of time may not look like the promised land, but you will recall that Wellington's experience was that bodily injury payments had increased in that period by 68 per cent.

What this minimal increase in bodily injury claims has meant in Quebec is that real prices have dropped. A *régie* comparison was done to see whether prices had increased at a rate equal to or greater than the consumer price index. What this study showed was that a policy that sold for \$229 in 1970, eight years before the introduction of pure no-fault, would sell today at about \$830 if rates had increased at the same rate as the consumer price index. The fact is that this same policy now in Quebec sells for \$779. That is \$51 less and due mainly to the lower cost of bodily injuries.

Our support for pure no-fault is also confirmed by a study conducted for the *régie* by University of Montreal professors Claude Fluet and Pierre Lefebvre in 1986. What they concluded strikes right to the core of our support for pure no-fault; so I hope I have your indulgence to read a lengthy passage. I quote:

"Evaluating economic loss does not present a special problem since it is based on objective criteria. Nonmonetary losses are another matter. There is no simple way of objectively assessing bodily injuries that entail permanent impairment or disfigurement, let alone suffering and loss of enjoyment of life.

"Proceeding from the legal principle of fully compensating for losses sustained, there can be no precise limit in the area of bodily injury. In liability insurance, premiums will have a tendency to rise to prohibitive levels where compensation is calculated after the fact."

To continue:

"This would be the cost to individuals of insurance even under a public plan like Quebec's were it not to consider from the very start how much the insureds are prepared to pay for protection from the consequences of accidents where they themselves would be victims. In that light, the acceptable price for insurance, is perforce limited."

Then they conclude simply by saying this:

"Several American states have adopted the principle, either in whole or in part, of compensation regardless of fault so as to rein in the share of indemnities paid for bodily injury in proportion to overall payments, attributable mainly to astronomical awards and litigation costs. Only some such measure will safeguard the possibility of having insurance at all."

I cannot imagine a more eloquent explanation and endorsement, looking at eight years into a system of pure no-fault. I hope this committee will seize the moment and take a brave step into the 1990s by recommending that the threshold plan be replaced with pure no-fault. Wellington has been a consistent supporter of this view.

Another question that is central to the debate is, "Who pays what?" A fundamental tenet of insurance is that premiums should reflect the risk. I mention this principle because it leads me to our second comment on the OMPP package; namely, that the proposed rating system does not go far enough to allow companies to place appropriate costs on high-risk situations.

Among the suggestions we have for additional rating factors are: a form of bonus-malus to surcharge poor drivers and provide discounts for good drivers; the freedom to use data that predicts the severity of an injury when driving a particular model of car. Statistics are available from sources such as the Highway Loss Data Institute that clearly show certain makes of cars are significantly more safe than others. To us, it only makes sense to factor this into individual rating; we would also like to be able to use household size and income because of the obvious relationship with risk; we also recommend the use of convictions, such as speeding, careless driving or the nonuse of seatbelts, as predictors of probable accidents. Research conducted over a six-year period by Mr Hindle in Saskatchewan, and incorporating all drivers, shows a clear and direct relationship between convictions and increased risk of accidents.

If we are going to construct a system that fairly reflects individual risk, which I might add has the benefit of eliminating inordinate subsidy of poor drivers by good drivers, and one that takes advantage of years of actuarial experience, we as an industry must be free to use such additional criteria.

My third and final suggestion concerns not so much Bill 68 but the provisions of the OMPP that are designed to reduce the frequency and severity of accidents. We support the early and modest proposals made in the OMPP, but we believe that

more radical measures are necessary and we urge the government to keep pressing forward.

Among the changes Wellington recommends are probationary drivers' licences; mandatory driver training for all classifications and a tough program of driver retesting; increased pressure on the automobile industry to improve safety elements as standard equipment on vehicles, and restrictions on new drivers such as a curfew or limited-usage permits.

In a stroke of perfect timing, the Toronto Star ran a major story yesterday on the ways that various jurisdictions are attempting to halt the appalling death rate of teenage drivers. Many of those countries and states cited are trying exactly the ideas that we are suggesting, and we are delighted to see that Ontario's Minister of Transportation is giving serious thought to schemes that could reduce the traffic accident death rate of our young people. We wholeheartedly support his efforts.

It seems clear to us that society is entering a new era in which we are starting to understand the need for prevention rather than simply reparation. To use a familiar example, I think everyone would agree that preventing disease is a wiser route to take than the more costly and traumatizing alternative of surgery, therapy and hospitalization. So it goes with automobile accidents.

We need to stress prevention and reduce the tragic toll of deaths and injuries. We also need to do one other thing. We—drivers, legislators, special-interest groups and the insurance industry—all need to work together to make the system function well again. No one is well served by those who would cynically use the pain of accident victims to support their own self-interest or try to advance partisan political gain.

The OMPP and these hearings represent an excellent opportunity to rebuild a failing system. If the committee is prepared to accept our recommendations on pure no-fault and additional rating factors and continue to take dramatic action on safety, we feel that Ontario has an excellent opportunity to create an equitable, affordable and humane automobile insurance system that will become a world standard.

The Chair: I have Mr Kormos, Mr Laughren—he wants in on some of your time, Mr Kormos, as you see fit—Mr Runciman and Ms Oddie Munro. Five minutes.

Mr Kormos: I am going to be very brief if Mr Laughren is going to speak.

I have to tell you when I asked Mr Fraser from State Farm whether it had given \$1,800 of its

premium payers' money to the Liberals as a gift, he got a little bit upset; he got miffed. I got the impression that he did not think it was fair that I would let the cat out of the bag.

I want to be consistent, not perhaps in getting people miffed but in pointing out that my notes indicate Wellington gave the Liberals \$3,700 in 1987. Maybe you are right, maybe 1988 was not as good a year, because you only gave \$2,500 in 1988. Those figures are correct in terms of the type of contribution you have given to the Liberal Party in 1987 and 1988, are they not?

Mr Wallace: I suspect they are, sure.

Mr Kormos: You are not upset that I asked you that?

Mr Wallace: No. We make contributions to all of the major parties that support the private sector.

Mr Kormos: I can tell you, and you should tell your brokers, that there is a need and room for them in the public, driver-owned nonprofit system that is truly going to provide affordable and fair automobile insurance. Surely—no, I will leave this one alone. Mr Laughren wanted to ask you a few things.

Mr Laughren: I want to know how much you gave the Tories that year you gave the Liberals \$3,700.

Mr Wallace: I cannot remember, honestly.

Mr Laughren: But you would have given them approximately the same amount.

Mr Wallace: Oh, yes.

Mr Laughren: You were quite effusive in your remarks about the rates in Quebec. Since in Quebec the bodily injury part of insurance is in the public sector, I am wondering whether or not you would support the pure no-fault that you talk about in Ontario if the bodily injury part were in the public sector as well.

Mr Wallace: I think these arguments about whether the private sector or the public sector can do a better job in the administration of a public utility system, which is automobile insurance, especially the bodily injury part, is arguable. Of course, it all comes down to private views. My personal view is that you will not get a more efficient or effective system by having a monolithic monopoly running anything; it does not matter whether it is a power company or an insurance company.

Mr Laughren: You do not think that is a bit simplistic and that economies of scale—

Mr Wallace: I think the economies of scale are overshadowed by the diseconomies of size; large organizations are inherently ineffective.

Mr Laughren: I think the classical economists are going down the tube here. We are worried about them.

Let me get this straight. I want to get the position of Wellington Insurance clear in my head. You really argue very strongly for a pure no-fault system. That does not bother me, but what I do not really understand is whether you are saying that if the Ontario government had brought in the Quebec model, you would have supported it.

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Mr Wallace: If it was left in private hands for delivery.

Mr Laughren: No, no. In the Quebec model, bodily injury is in the public sector, right?

Mr Wallace: Yes. Naturally we would not support it, because it is our view that we can do a better job for the customer in the long run.

Mr Laughren: Despite the record of the plan in Quebec, whose virtues you extol in your presentation.

Mr Wallace: Yes, they have had a fine record, but it is difficult to tell whether it would not have been just as fine or better had they implemented a no-fault system but left the delivery in the hands of the private sector.

Mr Laughren: So you do not accept the numbers in Quebec at face value as being there because of the bodily injury part being in the public sector.

Mr Wallace: No. I think the majority of the benefits are because it is a pure no-fault system. I will say one thing to elaborate on that. In examining the evidence over the years, we did go back to the original committee of inquiry in Quebec in 1974 that examined the 10-year period from 1961 to 1971. It would surprise you—it would not surprise you, I guess—to learn that nothing is new under the sun and the issues that are being dealt with there in this three-year commission of inquiry are precisely the ones dealt with by Osborne and Waddams and the industry today, which basically demonstrated that all the costs of operating the system had declined over the 10-year period to 1971.

The rate of underwriting profit had remained precisely the same and it was only the rise in the cost of claims and in particular bodily injury claims which was—listen to this one—“making automobile insurance unaffordable.” That is 20 years ago.

Mr Kormos: What is the balance of the time?

The Chair: One minute.

Mr Kormos: It looks like those contributions are paying off because the Liberal government in Quebec, the brothers and sisters of Peterson and his gang of Liberals here, is maintaining that public system. Perhaps the auto insurance industry did not grease them as well as they greased the Liberals here in Ontario. That is perhaps a word of warning.

Ms Oddie Munro: I am glad to see on page 6 that you are looking at the environment in which Bill 68 finds itself because certainly Mr Elston, in introducing the committee hearings, has said he also agrees that the best deterrents to bad driving come from criminal sanctions, higher insurance premiums, enforcement and better education.

One of the things I would like to ask you is how you view from the insurance perspective the concern of many of the groups that have appeared before us in the last two days on the psychological trauma and emotional stress on the rehabilitation side prior to the right to sue and also that provision which allows the physiological aspect of psychological pain and suffering to proceed through the courts. What we are trying to get a handle on is what we feel is our desire to incorporate that into the regulations and into the act. I am wondering what your response is.

Mr Wallace: I can just say that any way in which the regulations change the broad tenor of the act will affect the cost side of the equation. With that general proviso, I am going to ask Dwight Lacey to comment on that because he has been working on implementation here in Ontario and we are contemplating something like that.

Mr Lacey: I am not sure I understand the question 100 per cent but, as I understand it, what you are asking is whether or not the legislation should put in some provision for payment for pain and suffering.

Ms Oddie Munro: I would like to know how you view it, how your industry and how Wellington views it, and how you would conform to the regulations and to the spirit of the act.

Mr Lacey: First of all, I do not think there is any amount that you can pay someone to compensate for pain and suffering, so I am opposed to it. A lot of examples have been brought forward of individuals who watch a child be killed at an intersection or running out in the street and do they not deserve something to be paid to them for that loss? I am a father of four. You cannot pay me enough to pay for the loss of a child and I am not interested in it.

If that results in a loss of ability to go back to work, I need somebody to help me get it straightened out and get my mind back to being able to work and earn a decent income. We are in favour of any provision in the legislation that does that; that puts the insurance company in the position of saying, "Go to work with the victim and make sure he can get back to work and be a productive member of society."

Ms Oddie Munro: Therefore, you have some empathy for definitions of what has traditionally been very difficult to observe and measure?

Mr Lacey: Absolutely.

Ms Oddie Munro: Good.

The Chair: Mr Nixon, two minutes.

Mr J. B. Nixon: There have been a lot of suggestions and allegations that insurance companies have been difficult and unco-operative in dealing with their claimants who are entitled to no-fault benefits.

Mr Laughren: Name names. That is a broad smear.

Mr J. B. Nixon: I am thinking about naming names, but I have heard it is probably not a wise idea.

There is some suggestion that by moving from a third-party to a first-party claim basis, that will improve the situation. That still does not eliminate the allegations and the suggestions of once an insurance company, always an insurance company. How do you respond?

Mr Wallace: This is a big one for us, because we are finding in getting our adjusters prepared for the no-fault environment, the first-party environment, we have had to do a significant amount of deprogramming. I think it is because they grow up in an environment where, on the one hand, as a basic tenet claims people are instructed, "You are here to pay claims," but the other tenet is, "You are here to protect all the policyholders and if you pay too much, you are not going to be looking after policyholders." In a third-party environment, of course, that can be dynamite, because the person you are dealing with is not even your client.

We are working with people from the United States on developing training programs and with our sister company, London Life, which does pay first-party claims, to try to soften these attitudes. We think it is coming off. We think people are now looking forward to dealing with their own clients and that it will change adjuster behaviour. I do not think there is any doubt about it.

Mr Runciman: I have a brief question. Mr Wallace, how long have you been with Wellington?

Mr Wallace: Two years and one month.

Mr Runciman: I think I recall your appearing before the standing committee on administration of justice on Bill 2.

Mr Wallace: Yes, I was here for Bill 2.

Mr Runciman: You have had experience in public systems. Is my memory serving me correctly that you were involved with the Saskatchewan system?

Mr Wallace: Yes.

Mr Laughren: Oh. You did not tell me that.

Mr Runciman: I am a little curious. We have had a couple of witnesses who could be perhaps most charitably described as to the left of the spectrum—one here today and one since we have started the hearings—who have not been happy with this but have suggested pure no-fault, and obviously a government-run, pure no-fault system, but they have been somewhat pleased in seeing this as a first step in that direction. The Toronto Star, another advocate of government-run no-fault, has also endorsed this bill, again seeing it as a step in that direction towards the government ultimately taking over the business.

I gather from your comments today that your firm does not share that concern. You do not see that in the very near future that may be the reality in this province.

Mr Wallace: No, we do not necessarily see that as a step or we would not be making the investments we are making to try to stay in the game, but I think it is interesting that the public programs in British Columbia and Saskatchewan and Manitoba are currently considering moving to a reparations or no-fault approach in a more significant way.

There is no inherent reason why a move to no-fault is logically followed by a move to public insurance. I think there is no question that if this does not work and the companies are unable to survive in that market, there will be no market and so then you will have public auto insurance. But everybody is going to work as hard as he can to make it survive.

Mr Runciman: I am not sure if it was before your time at Wellington, but your company made a submission to the Slater commission. At that time I believe it was the company's position that you were not supportive of no-fault. Maybe I stand to be corrected, but that is the information I was given, that the firm was not supportive of

no-fault and saw no real gain in moving in that direction. Is that inaccurate information?

Mr Wallace: It is not in my recollection, because when we came before the committee on Bill 2 our consistent position had been no-fault, as I understand it, and it is certainly the position now.

Mr Runciman: Not Bill 2; I am talking about the Slater commission.

Mr Wallace: Yes, but I can only tell you what our position has been for the last two and a half years or so and our position is clearly in support of no-fault. There is plenty of evidence now.

Mr Runciman: So the change, if indeed a change has occurred in terms of the position of the company, is because of the change at the top?

Mr Wallace: No, I think it is just the increased, overwhelming evidence that it works.

The Chair: Thank you, gentlemen, for your presentation.

Next we have Mr Pearce from the Ontario March of Dimes. The clerk is distributing the brief. Mr Pearce, you have half an hour. I would suggest you try to keep your presentation to about 15 minutes to allow questions, discussion and comments from committee members. We are in your hands.

1630

ONTARIO MARCH OF DIMES

Mr Pearce: The Ontario March of Dimes has more than 10,000 volunteers across Ontario and I have asked one of them, Dr Tom Deans, a member of our voluntary government relations committee, to accompany me this afternoon to tell you a little bit about our organization.

Dr Deans: The Ontario March of Dimes thanks the government of Ontario for this opportunity to respond to the proposed Ontario motorist protection plan, Bill 68.

The March of Dimes addressed the issue in April 1986 in a letter brief submitted to Dr David Slater of the Ontario Task Force on Insurance. In that brief, our organization addressed three points: compensation for the newly disabled, arbitrary limits on recoveries and obstacles created by the insurance system. Our comments on the Ontario motorist protection plan, Bill 68, will be principally limited to the extent that the Ontario motorist protection plan addresses our expressed concerns.

At the outset, it is important to point out that the March of Dimes is pleased that all three of our points have been addressed in the proposed legislation.

We strongly believe that insurance coverage, in all its forms, must now be regarded as one of life's necessities. Without it one cannot participate in society as employer, employee, home owner or automobile driver and certainly cannot take on the normal obligations to care for oneself or one's family."

In particular, motor vehicle insurance must provide for the necessities faced by an injured person. Through our work in the area of rehabilitation of persons with disabilities, we understand the real need faced by victims of motor vehicle accidents. To quote Alan Hutchinson, writing in the 8 January edition of the *Globe and Mail*, "How we treat the victims of misfortune indicates who we are and what we aspire to be."

Since the organization's formation in 1951, the mandate of the Ontario March of Dimes has evolved significantly. The original function of the Ontario March of Dimes was to fund research to find a cure for poliomyelitis. With the development of the Salk vaccine, the emphasis of the Ontario March of Dimes shifted to treatment and rehabilitation of adults who were experiencing the residual effects of polio.

Over time, the population served by the Ontario March of Dimes was expanded to incorporate all physically disabled adults in Ontario. The mission statement of the Ontario March of Dimes states, "The foundation's basic objective is to assist all physically disabled adults in Ontario to achieve a meaningful and dignified life."

As a result of this mandate, the Ontario March of Dimes is active in 27 communities across Ontario as a voluntary sector agency serving adults with physical disabilities. We concentrate 90 per cent of our resources on three services necessary to the independence and dignity of persons with disabilities.

The first service is employment services. Employment services at the March of Dimes are composed of two primary components: Discovery computer training and vocational rehabilitation.

"Discovery computer training" is the name given to a variety of training programs across Ontario which prepare people with physical disabilities for competitive employment in the field of microcomputer business applications.

"Vocational rehabilitation" is the term applied to a continuum of services designed to return injured workers to a workforce and to prepare congenitally disabled individuals for first-time employment. Our services, delivered through 11

vocational rehabilitation centres in Ontario, include vocational assessment, work adjustment training, community placement, physical demands analysis, supported employment and placement services.

Vocational rehabilitation continues to represent more than 50 per cent of the entire operation of the Ontario March of Dimes. This service is of particular necessity to persons who are returning to work after receiving an injury through a motor vehicle accident.

The second service is independent living assistance. The independent living assistance program offered by the March of Dimes consists of two services: outreach attendant care and home support services. These services ensure that an adult with a physical disability can live in his or her own home or in specially adapted apartment complexes in the community.

The third service is assistive devices. The March of Dimes assists persons with disabilities in purchasing assistive devices to increase mobility and independence, including wheelchairs, canes and crutches, lifting equipment, prosthetics, orthotics and orthopaedic shoes, environment control systems and communication devices.

The remaining 10 per cent of our available funds are dedicated to vocational needs assessments and research, camping and recreation, public education and the provision of an information service for persons experiencing the late effects of polio.

At this point, I would like to turn it over to Randall Pearce, the director of government and public affairs, and he can perhaps go into some more details of some of the individual points raised.

Mr Pearce: The first point I would like to address is compensation for the newly disabled. In our view, the present two-tiered system of compensation is based upon cause rather than need. The Ontario March of Dimes is pleased that the OMPP is based upon a no-fault scheme which is sensitive to the needs of disabled persons regardless of cause. The need for compensation, rehabilitation and long-term care bears no relevance to the cause of a motor vehicle accident-related injury. We believe the OMPP responds to the needs of the relatively high percentage of our clients who become disabled through no fault of their own or of others.

The schedule of draft no-fault benefits distributed as part of Bill 68 substantially improved the post-accident prospects of thousands of individuals who have traditionally subsisted on

low compensation offered through their own insurance policies. The adequacy of the levels prescribed in the proposed legislation may be debated at length. However, the increase from \$140 per week to \$450, or 80 per cent of income, is substantial. The Ontario March of Dimes hopes that these levels will be reviewed on an annual basis by the proposed insurance commission.

In addition, as an agency involved in the rehabilitation of persons with disabilities, we are particularly pleased with the substantial increase in the supplementary medical care and rehabilitation benefit from a four-year maximum of \$25,000 to \$500,000 over 10 years. As a supplier of attendant care services we are encouraged by the new long-term care benefit introduced under the proposed legislation. Once again, the need for an annual review of care levels should be undertaken by the proposed insurance commission. We are pleased to note the economic efficacy of the proposed system. The no-fault plan eliminates many of the costs associated with determining responsibility for motor vehicle accidents except in those cases involving permanent disability.

That is the next point I would like to address, under arbitrary limits, and I believe this is the most important, in our view. In the March of Dimes brief to the insurance task force we emphasized the need for insurance reform to be governed by the right of the disabled person to return to as full and normal a life as possible. For this reason we ask that no arbitrary limits be placed on recoveries for the most severely disabled persons. We feel that the retention of the right to recovery through the courts is an important, in fact essential, component of the proposed OMPP.

Although the definition of the threshold for recovery will be tested in the courts, the March of Dimes hopes that the proposed insurance commission will ensure that the definition will not unfairly limit an individual from seeking recovery through the court system if he or she believes his or her disability to be both severe and permanent.

In our brief we address a number of obstacles created by the insurance system as it currently exists, and these are the next points I would like to deal with.

The March of Dimes recognizes two recent initiatives within the recent context of insurance reform which promised to reduce obstacles created by the insurance system. The first initiative undertaken by the former Minister of

Financial Institutions, the Honourable Robert Nixon, promised amendment of sections of the Human Rights Code to eliminate discrimination by insurers against persons with disabilities. We ask that the committee request that this reform be undertaken immediately to coincide with the coming into effect of the proposed legislation. Another strategy, proposed by the Advocacy Resource Centre for the Handicapped, recommends amending the proposed OMPP to include specific prohibitions against persons with disabilities, and that merits serious consideration.

The second initiative, the creation of a new insurance commission, also holds promise, we believe. The March of Dimes is particularly pleased to note that the responsibility for the mediation of disputes between victims and insurers and the timely delivery of benefits rest with the commission. In addition, we feel that the research conducted by the commission in the areas of rehabilitation and long-term care will be of benefit to organizations like ours providing these vital services.

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In conclusion, the Ontario March of Dimes wishes to express its support of the government's recent initiative in the area of motor vehicle insurance reform as contained in the Ontario motorist protection plan. In particular, we are pleased with the manner in which the proposed legislation has addressed our concerns as expressed in 1986. You can refer to the brief attached, if you choose.

In principle we support the substantial compensation benefits contained in the draft schedule of no-fault benefits. However, we believe that the proposed insurance commission should be charged with the responsibility of reviewing the schedule on an annual basis to ensure fair compensation and care levels. In addition, we believe the commission should not pose a barrier to severely and permanently disabled persons who wish to seek recovery through the courts.

Last, to complete the process of real reform within insurance with respect to persons with disabilities, the March of Dimes encourages the government to enact amendments to the Human Rights Code without delay so that all persons may enjoy equal benefit under the Ontario motorist protection plan.

The Chair: We are going to share six minutes, hopefully.

Mr Kormos: In response to Bill 68, Don McKay, general manager of the Facility Association, says that it is going to result in even more people being forced into ultra-expensive Facility

and especially particular classes of persons: seniors, unemployed people, entrepreneurs, small business people, people in low-paying jobs which among other things do not have healthy benefits packages.

In view of his prediction that there has been a significant trend towards the inflation, and an artificial inflation, of Facility, I appreciate what you are saying about the Human Rights Code legislation, but quite frankly my old beagle in the backyard down in Welland has more teeth than any of these government agencies are ever going to have, including the insurance commission, especially if the superintendent of insurance is any sort of precedent.

Surely you would want insurance, a guarantee, that the people who are your constituents, who may oft-times fall into those classes I have just described, or more important the volunteers who are so important to any number of organizations who often fall into those classes, retired persons—would you not see a need for some significant guarantee that these people will not be forced into Facility by virtue of the whim of insurance companies motivated by profit interest?

Mr Pearce: That is exactly what we are asking for with respect to amendments to the Human Rights Code. You are suggesting through your comments that other people, unemployed or retired people, are not covered under the Human Rights Code and therefore there should be something stronger. I just have to remind you, Mr Kormos, as you visit us in Welland, that our client group is disabled people and they are who we are here to represent today.

Mr Kormos: I understand that but surely you know better than to believe that an insurance company with its big, well-paid executives is going to say to a person, "You are not going to be accepted as an insured because you are disabled." These guys can manipulate the rules far better than that. That is where I suggest to you that the weakness is, that the disabled fall into the class identified by Don McKay of Facility Association and that the Human Rights Code in itself, strengthened or not, is not going to protect your people when they are the victims of the whim of private insurers. That is my concern.

Mr Pearce: We have drawn attention also to the proposal by the Advocacy Resource Centre for the Handicapped, which suggests that amendments be introduced within the Ontario motorist protection plan to ensure that disabled people in particular are not forced into the Facility Association. We have offered that within the

brief. I think we are following these two approaches equally. We are looking for some solution to that problem.

Mr Kormos: What I tell you is missing here, and that the government has refused to acknowledge is missing for months and months now, is the protection of insured persons when it comes to availability or accessibility to insurance. There is nothing in this legislation that is going to ensure that any given person will be insured. There is nothing in this legislation that will protect people across Ontario from the capriciousness and greed of insurance companies. The government has not remedied that problem. The problem has been all around us for a long time.

Mr Pearce: I do not really accept that because the reason we proposed no-fault in the first place was to decrease costs. The savings might not be as great as the government claims, and the reduction in savings may not be as great as you claim, but there are savings somewhere in the middle under a no-fault scheme, regardless of its being a public scheme or a private scheme.

Mr Laughren: Before you get too profuse with praising the government for having these hearings, I should tell you that it resisted mightily the fact that we even have these hearings.

Interjection: Not mightily.

Interjection: Pretty mightily.

Mr Laughren: They certainly did.

Second, I am surprised by your brief. In view of the fact that you started out as an organization for polio, do you believe that of two people with identical disabilities, one who got the disability by a disease or by birth should have a different level of support by the system, by the state, than someone who becomes disabled with an identical disability through an accident?

Mr Pearce: You are now sort of leading us away from the OMPP. A comment like that is not really appropriate for me to make this afternoon, I am afraid.

Mr Laughren: I was trying to get at my surprise at your support for the tort aspect of Bill 68. I do not know why you are enthusiastic about the right to sue in Bill 68.

Mr Pearce: We feel that in the case of severely disabled people the need is much more exaggerated than can be accommodated under any sort of general plan, so in those cases where someone is severely disabled as a result of a motor vehicle injury it should be looked at carefully by the courts and not simply lumped in with those people who may be experiencing minor effects of a motor vehicle accident.

Mr Sola: I will cut mine short, just to one question. On page 4 of your brief I am interested in the statement that you are "particularly pleased with the substantial increase in the supplementary medical care and rehabilitation benefit from a four-year maximum of \$25,000 to \$500,000 over 10 years," because just a couple of briefs ago the Advocates' Society stated that was nothing more than window dressing, that it was a sham because very few cases used up the \$25,000 so there would not be any substantial benefits or savings to be made by the increase to the \$500,000 figure.

From your experience in your organization, have you seen that \$25,000-figure exceeded or do you think the new figure will be of benefit to you?

Mr Pearce: Yes, in fact we have seen several unfortunate cases where people have run out of rehab benefits before any substantial progress was really made, and that is the end of the line for those people at this point. There is no farther they can go once that \$25,000 is eliminated and there is quite a lot that can yet be done for them. So the answer is yes, we believe this increase is substantial and useful and beneficial.

Mr Sola: How often does this occur in your experience?

Mr Pearce: I do not have direct client experience myself. I was informed of cases as I was preparing for the appearance here today, but I will tell you that when you are dealing with individuals whose options have been eliminated, if there were one person in the province, if there were 10 people in Ontario this was going to benefit, you would be doing something very significant here.

Mr J. B. Nixon: I would like to follow along the same line of questioning as Mr Sola. I was reading a study that was conducted in Manitoba. It was conducted by a judge in Manitoba on behalf of the Manitoba government, reviewing the operation of the public insurance corporation there. He recommended pure no-fault, but his estimate was that there were approximately six cases per year in Manitoba of automobile accidents where one of the victims became either a quadriplegic or a paraplegic.

My general thought was, "I'll just multiply that times 10 because Ontario is 10 times as big." Does that make sense, do you think? I am not asking you to verify its accuracy, but is there any distinguishing feature in Ontario which says I could not do that?

Mr Pearce: It would be speculation on my part since I am not familiar with the statistics. I

guess there is more traffic here. There are more roads. You would have to give it a little bit of a greater factor.

Mr J. B. Nixon: That is true.

Mr Pearce: I am not familiar with the statistics, so I am afraid I cannot comment.

Mr J. B. Nixon: We might be better off matching it with the total number of accidents and using that as a factor.

Mr Pearce: That might be a route, but I guess, just to follow up on my response to Mr Sola, if through this legislation you can provide opportunities to six, 60 or 600, then that is worth while. It is very difficult when you are forming public policy. I know you want to look at numbers and statistics, but you are talking about individuals here, and not the individual on his own because he is never alone. He has a support network and a family and a community around him. If you can benefit these severely disabled people by avoiding the temptation of a pure no-fault system, then you have done something. Then it is an accomplishment, and it is what we asked for four years ago.

Mr J. B. Nixon: Part of the argument for doing things the way we are doing them is that it rewrites the imbalance of the present compensation system where the minor injuries are over-compensated and the major injuries are under-compensated.

Mr Pearce: Sure; I would agree.

Ms Oddie Munro: I would like to thank you very much for sharing your experience with disabled people from another category, not necessarily automobile accidents, because I think that sometimes what we would like to do in the best of all possible worlds tends to get in the way of what is already working and relevant to the kinds of things we are trying to do here. That was my initial reaction to what you are saying.

We have tended to put a lot of emphasis on the rehabilitation component in terms of moneys and services being available quickly. I guess I am going to ask you one more time, how critical do you think that is, the speed with which money and services are accorded disabled people in their recovery?

Mr Pearce: It is absolutely essential. There is one particular point within the plan that calls for benefits to be paid within seven days, even if a form is not filled out. That statement alone seems to speak well for the plan.

The government has seen situations where perhaps someone does not have the support network, does not have someone looking over his

affairs or perhaps is just so wrapped up in the severity of the accident and the recovery of the individual that the form does not get filled out. As time goes on, apartments are lost or bills are racked up and incredible costs are incurred. So it is absolutely essential, especially for the lower-income people Mr Kormos was referring to, that these benefits be paid without delay.

Ms Oddie Munro: What do you think your role will be with the commission itself and with the insurance companies, brokers, adjusters?

Have you approached them? You have to say yes or no. I know we are running out of time.

Mr Pearce: We have not, to date.

Ms Oddie Munro: I encourage you to do so.

Mr Pearce: Thank you.

The Chair: Thank you very much for your presentation. The committee stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1653.

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Clerk: Carrozza, Franco**Staff:**

McNaught, Andrew, Research Officer, Legislative Research Service

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Maier, Richard, Chairman

Hoch, William A., Executive Director

From the Ministry of Financial Institutions:

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)

Endicott, Eric, Manager, Policy Co-ordination

From the Insurance Brokers Association of Ontario:

Taylor, Terry, Assistant General Manager

Near, Spurge, President; Spurge Near Insurance Brokers Ltd

From the Advocacy Resource Centre for the Handicapped:

Beatty, Harry, Legal Counsel

McInnes, Ronald, Past President, Ontario Advisory Council for Disabled Persons

Baker, David, Executive Director

From the Royal Insurance Co of Canada:

Elms, Roy A., President

Maddocks, Judy, Manager, Ontario Personal Lines Insurance

Boyle, Terry, Director of Claims

Individual Presentation:

Olds, Lewis, Director, Valuation and Litigation Support Services, Soberman Isenbaum and Colomby

From the Pain Management Clinic:

Walton, Allan T., Director

From the State Farm Mutual Automobile Insurance Co:

Fraser, Cliff, Deputy Regional Vice-President

Brown, Harry, Legal Counsel; with Lyons, Goodman, Iacono and Berkow

From the Advocates' Society:

Jarvis, Peter, President

Rachlin, Ted, Former President

Raphael, Bert, Chairman, Insurance Committee

From the Wellington Insurance Co:

Wallace, D. Murray, President

Lacey, Dwight, Senior Vice-President, Ontario Region

From the Ontario March of Dimes:

Pearce, Randall, Director of Public Affairs

Deans, Dr Tom







Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 11 January 1990

Speaker: Honourable Hugh A. Edighoffer
Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 11 January 1990

The committee met at 1000 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I recognize a quorum, and by my watch it is 10 o'clock. I would like to welcome Ms Barbara Baptiste, president of Rehabilitation Management Inc. I believe the brief has been circulated. You have half an hour before the committee and I would suggest, if possible, you keep your remarks to about 15 or 20 minutes so that we can allow for some good discussion and interaction. Welcome to the committee. We are in your hands.

REHABILITATION MANAGEMENT INC

Ms Baptiste: Thank you, Mr Chairman. I do appreciate the fact that the committee is here to listen to suggestions and proposed amendments and I appreciate the fact that by listening there will be some judicious and objective actions, because this is very much needed.

I am here as a representative of many rehabilitation specialists who work with victims of automobile accidents on a daily basis. Rehabilitation is about long-term wellness. Following a traumatic injury as a result of an automobile accident, individuals and their families may face the most devastating changes of their lives. For this reason, the increase in rehabilitation and wage-loss benefits under the proposed no-fault legislation is much needed.

There remain, however, gaping holes with this legislation which can only be offset by the appropriate legislation under the tort section. Unfortunately, the present proposed verbal threshold is poorly drafted and too restrictive to answer the needs of those who need help the most. Changes are essential, and without such changes the positive impact of increased no-fault benefits are lost.

Over the next 15 to 20 minutes I will provide my special insight, which includes over 10 years of working with individuals who have experienced automobile injuries, as well as working with the insurance industry and legal and medical professionals in the capacity of rehabilitation

specialist. If the gaps in this legislation are pointed out, hopefully you will be in a better position to make recommendations to accomplish the object of what this legislation purports to do.

In providing suggested amendments to the proposed Bill 68, I have categorized these suggestions into those which relate to the threshold as drafted in the proposed statutory amendments, and rehabilitation issues as drafted in the proposed no-fault benefits schedule.

We will start with the proposed statutory amendments. The language of the threshold must be altered. It is essential that the word "physical" be removed from this definition. Equally important is the insertion of the word "or" between "permanent serious." I am going to show you how this applies.

One of the major components of my work and that of the 25 counsellors who work with my company is to return people to work and their previous lifestyle. Work has always been and is the major source of identity in society and the method of financial support. We have seen occupational shifts in the last few years since the rapid advancement in the field of computer science, especially in the skills demanded in this case by an injured person to support himself and, in most cases, his family.

The need to process information efficiently has become more and more important. Consequently, survivors of head injuries and individuals with reduced psychological capacities become more challenged by these advancements in the workplace. This can lead to substantial wage loss and loss of opportunity for the innocent victim who suffers from such problems. This would not be recoverable under the proposed Bill 68, because not only does it not address the lack of employment advances or opportunities, but also there is the very serious threat as to whether many head injuries would make the threshold. Certainly psychiatric or psychological disorders would not.

There is little doubt in my mind that the insurance industry as well as those who drafted this legislation, and perhaps they are one and the same, have no grasp of the mechanisms of these injuries and the impact on all aspects of a person's life. It is truly disheartening to see this

lack of knowledge blatantly manifested in this bill. So there we have looked at the psychological aspect and eliminating the word "physical."

Now consider the added problem in the wording "permanent serious." Vocational market shifts such as computerization, mechanization and the trend towards service-oriented industries have altered the physical demands required of a worker. This shift has replaced frequent handling of heavy materials with light, repetitive motions and prolonged standing or sitting. We call that static loading. Therefore, even a return to light-duty employment may not be possible for those who have sustained orthopaedic injuries.

Take, for example, a spinal fusion. Due to successful surgical intervention, the injury would no longer be deemed serious, yet it is certainly permanent. Based on the wording of this legislation, the person who had the fusion would not be able to obtain the wage loss, the loss of opportunity and advancement, and would get nothing for the pain and suffering through a tort action. Not only are individuals challenged within physical jobs, that is, occupations profiled as heavy duty, such as the construction trades, but also those profiled as light and sedentary with prolonged sitting and standing and repetitive movements may challenge the residual pain or loss of function.

Individuals want to get better. Their doctor says that their injury is no longer serious and by medical standards resolved and that they are to partake in light-duty work. They still have pain, they neither advance nor earn their previous income level, their life could be virtually destroyed and their previous lifestyle removed. In addition to this loss, anger and discontent ferment, flowing into homes, affecting families and their social contacts. I think you can imagine the cyclical effect.

We not only lose a valuable member of the labour force, probably to be picked up by a government social service program, but also his contribution to society. I hope you see how this legislation is worded to ensure this occurs. This cannot work. It inhibits recovery while trying to encourage same. That does not make sense.

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Rehabilitation specialists cannot walk on water, although we appear to be considered to be able to do so by this legislation. Rehabilitation will not be the answer to all the dilemmas. How can we rehabilitate innocent accident victims who are full of vindictiveness when they see that they have been robbed of their right to opportuni-

ty? It is human nature to react this way if you are not at fault.

I work with both at-fault and not-at-fault clients. This is a reality: innocent victims utilize the right to sue for such losses as a way to vent their anger. To ignore this is totally unreasonable. If people know they have done nothing wrong, I would ask you to be the one who tells them that they cannot get that management position or promotion or that they can only work part-time hours when they need to work full-time and cannot be compensated, and then try to rehabilitate them towards those goals. If we really want to get injured people back to work, let us do something positive to make it happen. This legislation contradicts human nature and contradicts what it apparently set out to do.

I have a client I am working with right now who looks wonderful. He has got this problem with information processing that we are talking about. He is a high-income earner who is only earning the amount of money, the \$140 a week. He is a very motivated person who wants to get back. I went to an interview with him because of the various problems he had and he wanted explained. Somebody called him all excited, the personnel director, and said, "We need you here, we want you for this position." The advancement would have upped his wages from what he was making prior to the accident, \$50,000 to \$100,000, possibly more because of what was structured in there. This is a high-income-earning individual.

He had to say no. There was not any question there. He could not do the tasks required in that job. A drunk driver hit him. He is not supposed to be angered by the fact that he is only going to be making now a maximum of \$450 as opposed to the \$140. Where is that anger going to go, and the way it has affected his family and the way he feels? There has to be some outlet for that lack of opportunity, and that is not in this bill.

I am going to look now at the proposed no-fault benefits schedule. There are a lot of different issues that I see with this. I am going to bring up two of them that stand out the most. First, the definition of "medical adviser" in part II, subsection 7(4): In my opinion, when you are looking at occupational-related issues it is essential that this adviser encompass the vocational rehabilitation counsellor, and I will talk more about this later.

The other issue is payment for rehabilitation expenses. One of the most important parts to the rehabilitation equation is the timely movement forward of intervention by the rehabilitation

team. This is well documented in the literature and in the experience of any rehabilitation specialists. I give here a reference for you to Dr Kathryn Boschen. She has looked at all this information and compiled it into an article, "Early Intervention in Vocational Rehabilitation," done last March.

It is very important that rehabilitation expenses be paid pending a dispute. This will also encourage the insurer to resolve disputes early, and that is important. Just as a payment for a prosthetic device must be made, as long as it is determined to be reasonable and necessary, so should the intervention of the active rehabilitation team, such as life skills and occupational specialists. These groups provide what is termed in the rehabilitation field "environmental prosthetics." Yet this is not provided for in this proposed schedule.

Another way that this encourages nonaction and delayed rehabilitation, thus delaying a person's return to a productive lifestyle and income-earning capacity, is that injured persons concerned with whether they meet the verbal threshold—there are going to be so many question marks here—will not pay for the rehabilitation process in advance. I see no provisions to ensure that clients obtain rehabilitation, only that they be paid for expenses incurred. Many services for injured persons are not covered by OHIP. If a lawyer does not help access funds, what assurance will there be that a person will actually get the necessary active rehabilitation? It is not here. Look at the wording.

As you can see, Bill 68, as currently drafted, only feeds into the process of prolonging the recovery of the injured individual while trying to do the opposite. There have been enough advancements in the field of rehabilitation and the study of health and wellness to ensure that just as important as surgical intervention and prosthetic devices is the process of immediate treatment through the community rehabilitation process. Here I ask you to reference a study that was commissioned by the Liberal government, by the Workers' Compensation Board, entitled *An Injury to One is an Injury to All*.

To accomplish the aims of the legislation it would be preferable for the professionals, the doctors, the case managers, the vocational rehabilitation counsellors, the treatment therapists, to all work together with the insurance adjuster who is the financial manager and the lawyer who is the advocate to ensure that this system works and the rehabilitation process actually occurs. The cost savings would then be

intrinsic. Instead, we are left with the restrictive wording of this legislation which undermines a progressive process.

My company is founded on a theoretical approach called the process approach. This approach considers both, and I stress both, the insurer and the lawyer as important and active parts of the rehabilitation equation, the insurer as the financial manager and the lawyer as the advocate providing an effective check and balance to the massive insurance system, which all too frequently is unresponsive and insensitive as an industry. The importance of including the lawyer for the individuals and their families is immeasurable, and remember that can be anybody here.

While this conclusion may not meet with the unanimous support of the insurance industry, I believe my friends within the industry who would not agree with me may find themselves agreeing if they or one of their family members suddenly becomes a rehabilitation client. There is an axiom, "Who feels it, knows it." I work daily with these feelings and I know this current legislation, if implemented, will be established on the backs of those who need to claim compensation the most.

I am also concerned about the open market for rehabilitation specialists which is intrinsic to this bill. When the criterion becomes only how fast we get people off these higher weekly benefits, rather than the expertise and the program quality of the rehabilitation providers, and this will occur, we invite ultimate failure. I am on the executive board to bring certification to the field of rehabilitation in Ontario. I can assure you this will not be the answer. It is only the beginning. The lawyers now serve a role to ensure expertise of professionals. To remove this check and balance is to invite liability issues. Why create problems when we can solve them instead?

I do not wish to become an advocate for my client. I want to remain a rehabilitation counsellor, moving an individual along in a facilitatory and directed manner. This legislation will throw this advocacy role on someone's shoulders, because the frustrations and the problems do exist when you have been an innocent victim of an automobile accident and they will exist on an ongoing and long-term basis. You cannot turn your ears from that. Rehabilitation, as I stated before, is concerned with long-term wellness. But rehabilitation exists within a sociopolitical system and this one cannot be effective without the changes in the current wording. If nothing else, remember that you have heard this.

1020

Will we ask medical doctors—we probably will—already faced with a burdensome role, to become advocates as well? We have already asked them to become vocational rehabilitation specialists. Clearly they are not trained, willing or prepared to take on these roles. Mr Justice Coulter Osborne covered this issue in his report, and I reiterate what any of us who has worked as allied professionals in the rehabilitation process has known for a long time, that doctors are forced by this legislation to make decisions outside their area of expertise. This is not what the doctors want but rather how this proposed legislation has been written.

I am going to quote to a 1987 clinical study described by a vocational evaluator where physicians were returning persons with hand and arm injuries back to jobs. The findings concluded: "All too frequently, the patient either exacerbated the original disorder, extended the original disorder, sustained additional injury and/or lost the confidence required to perform a given job. Thus, the return-to-work determination is a decision laden with liability, both ethical and legal, impacting significantly on each worker's safety and future."

Decisions which impact so significantly must include the knowledge of varied parties. This ensures responsible decision-making and a check and balance. Insurers will be overwhelmed by this responsibility and the concomitant liability. And when it does not work, instead of lawyer-bashing, we are going to start adjuster-bashing: "Well, these dumb adjusters, they don't know." It is being set up that way, not by you but by those who drafted the legislation. Innocent accident victims also will become the guinea pigs for poorly drafted legislation.

Let us make sure the benefits of this proposed legislation can actually be realized by making amendments. To summarize, the amendments which I strongly suggest to the proposed Bill 68, as I have explained in detail, are (1) removing "physical" from the threshold definition; (2) inserting "or" between "permanent serious"; (3) allowing innocent victims to sue for excess economic loss as they are allowed to do in Michigan; (4) looking at the definition of "medical adviser" to include the vocational rehabilitation counsellor, as suggested by Mr Justice Coulter Osborne, and (5) the payment for rehabilitation expenses cannot be the prerequisite for recovery. These should be paid pending dispute, specifically, under the no-fault sched-

ule, part II, subsection 7(5). In addition to clauses 1(a) and 1(b), 1(c) needs to be included.

Ontario is the wealthiest province in Canada. We will not maintain this leadership role if we follow the worst features of the Michigan law. If the legislation goes through unamended, this government will be responsible for those who are not protected.

The Chair: Thank you for your presentation. Mr Kormos, four minutes.

Mr Ferraro: Could I make a point of clarification?

The Chair: Sure.

Mr Ferraro: Quickly, Ms Baptiste referred to the definition of "medical adviser" as being part II, subsection 7(4). In the original draft, I am sure you were correct. In the new draft that everyone has, it is 6(1). I just wanted to make sure—

Ms Baptiste: Thank you very much. I was going to state that I did not have that one.

Mr Kormos: Along with your other comments, surely you must have concerns about the absence of indexing for the so-called no-fault benefits and the fact that annually they will be eroded by virtue of their not being indexed.

Ms Baptiste: I have a lot of concerns for a lot of the economic issues that go with this legislation. I am looking at the innocent automobile victims here, because they are the most difficult ones to work with. When you are trying to get somebody back to an income-earning potential that is somewhat equivalent to what he had before, and on top of that he is not at fault—I mean, I have quite a task in front of me to try to get some equality there with his loss of income since he has absolutely no ability to make up those losses over the years, so I am very concerned.

I am very concerned with a lot of the economic issues and I think they are better addressed by the economists, but yes, I am concerned about a lot of issues there.

Mr Kormos: Now, you spoke about the role of lawyers. This week Guardian Insurance was here and was really pleased about the fact that under this new scheme, lawyers will not have much of a role to play. Indeed, Guardian Insurance expressed it this way: "Basically, now we insurers will be able to deal directly with our insureds, with our injured people, and that will make the whole system much more pleasant." I presume they meant for themselves and not for the insured. That is like leaving a mugger alone with his victim and sending all the police officers home. What do you say about the role of lawyers

in your experience and with the types of people you are working with?

Ms Baptiste: I think that is a pretty graphic analogy and could fit. The lawyer has always been the person who ensures the professional quality and the expertise of the individuals who interact with his clients. No assurance will be there with this legislation—absolutely none. The lawyer is the one to make sure that his client is getting the best. Insurance adjusters are going to be overwhelmed. This is going to be an administrative nightmare for them, and it is going to be laden with liability. Wait until you see these decisions when they are making quick decisions about work, and not work, and bringing in people who will help make them quick decisions. Wait until you see the liability associated with that. It will be there and it will be mind-boggling.

Mr Kormos: Mr Justice Osborne noted in his report that in Michigan, where they have the same sort of, again, so-called no-fault system, because it is not really a no-fault system, the amount of litigation that has been generated by people having to seek their wage replacement from their own insurers has just been incredible. That is to say that insurance companies—Osborne did not say this; I will—traditionally have short arms and deep pockets. They are really good at collecting premiums but not so good at paying out benefits. Lawyers in Michigan are making all sorts of money having to fight for victims against their own insurers. Do you see this?

Ms Baptiste: I do.

Mr Kormos: I mean, my impression is that a victim is being made a victim twice, first by the drunk driver and then he is being bashed again by his insurance company, especially when there is not room for lawyers to play that advocacy role that is so important.

Ms Baptiste: Right, and we see that historically the record has been abysmal. That is on record. Justice Coulter Osborne's exploration of it was a work of scholarship. It is there; we see it. Yes, there will be all kinds of litigation. On top of that, you are going to have more litigation related to liability issues, getting people back to work too quickly and all the rehabilitation field. We do not have certification up here yet. It is coming up, but it is not here. You are opening yourselves up to all kinds of problems with this legislation.

Mr J. B. Nixon: From the point of view of a rehabilitation manager such as yourself, can you explain to me the difference, or why a difference should be made, between innocent victims of

accidents who sue and find someone at fault, innocent victims of accidents who sue and cannot find anyone at fault and get nothing, guilty victims of accidents who are sued and victims of accidents for which there is no other party, all of whom may suffer the same injuries, the same trauma? Yet you are suggesting we should seriously distinguish in that guilty victims should get nothing, innocent victims who cannot find someone at fault should get nothing. I mean, that is the message I am getting.

Ms Baptiste: No, I am not saying that, and if that is the message you are getting, you have got the wrong message.

Mr J. B. Nixon: Okay. Are you suggesting there should be a distinction?

Ms Baptiste: No. The victims who are at fault or guilty—that rehabilitation process needs to be there and I am not saying they should get nothing. What I am talking about, and I believe that you must be aware of this, is human nature. We are talking about the psychology of it. I think that you probably would have some insight, being an MPP, into the way individuals react to a situation if they are not at fault, if they clearly know they are not at fault.

1030

If somebody has run a red light, are you going to sit there and smile just the same as if you ran that red light and hit that person? There is going to be a difference in the reactions. That is human nature; that is the complexity of the—

Mr J. B. Nixon: Can I ask you this, then: Are you suggesting that all victims of all accidents should get full compensation, full rehabilitation services but that innocent victims who can find someone at fault should get more on top of that?

Ms Baptiste: They should get the losses or opportunity. They should get some reimbursement for that loss of opportunity. Yes, they should, because you are going to have some very angry people who will have no way to vent. As a vocational rehabilitation counsellor, I can assure you that I have been doing this for too many years with these individuals; I am not going to get them anywhere. If that is what is expected, then people are definitely expecting too much from rehabilitation, and I think I am pretty good.

Mr J. B. Nixon: So if a person is angry and he can blame someone for it, he should be able to go to court, hire a lawyer and vent it through the court system on that other person.

Ms Baptiste: Get their losses for what they legitimately suffered.

Mr J. B. Nixon: It is a philosophy that exists, I acknowledge that.

Ms Baptiste: I think it is a fact of life.

Mr J. B. Nixon: Well, philosophies and feelings are facts of life, I agree, and some share them and some do not.

Second question: On the one hand, there is a suggestion you are making that lawyers will be denied a role under the new system, and yet in discussion with Mr Kormos, you agreed that there will be more litigation, to ensure payment of rehabilitation expenses, of compensation, etc. You cannot have it both ways. Either the lawyers will be involved in doing what they traditionally do, advocating for and protecting their clients, or they will not.

Ms Baptiste: There is a misunderstanding here.

Mr J. B. Nixon: That is what I am trying to get at.

Ms Baptiste: Yes, okay. I will clarify this. The lawyers will not be involved for the reason that they need to be involved, to help facilitate a process—and I tried to show this in what I was saying—of getting somebody into the rehabilitation process and acting as a team, as part of that process approach. Instead, we will still maintain the old advocacy system which is very reactive. You punch me, I punch back, that kind of thing. It will not be moving forward; it will be that system.

What I am saying here is that if you just make some of these amendments, you can look at a system that will flow in a positive, proactive way, and I hope that is what everybody wants.

Mr J. B. Nixon: So I guess what we are both coming to is you are saying the basic parameters of what we are proposing, you think, is an improvement but for the amendments that you suggest have to be made.

Ms Baptiste: Right. They were definitely needed, yes.

The Chair: Thank you for your presentation this morning. It has been very useful in terms of being very definitive in some of the amendments you would like to see brought forward.

John Kruger, chairman of the Ontario Automobile Insurance Board. Sir, we have half an hour. For the committee's information, Mr Kruger does not have a written presentation but has informed me that he has about a 15-minute presentation and then he will leave some time for some questions and answers. He has said that if we have additional hearing time, or when we are into clause-by-clause, if we would like him to

answer some more questions, he would be more than happy to come back. Mr Kruger, we are in your hands for the next half hour.

ONTARIO AUTOMOBILE INSURANCE BOARD

Mr Kruger: Thank you, Mr Chairman. It is very difficult to take 32 days of hearings and distil them into 15 minutes, so I can only highlight some of the major things. I am sure Mr Kormos will have some questions, and I would want to give him that opportunity.

I might say peripherally that we have had Mr Kormos before us under cross-examination. So, Mr Kormos, the shoe is on the other foot.

Mr Kormos: The boot is on the other foot.

Mr Kruger: I see. Well, I am always pleased with your clarifications.

The first thing I would like to say is that I am not here to make any recommendations at all. What I am trying to do is instil some of the facts that might have been missed in this process.

We went through a whole group of hearings. One of the most dominant things that came out of all of those hearings—and that is why we put it in our reference, right up front on the level of recovery, it is recommendation 1—was that, “There exists among Ontario consumers the perception that insurance premiums are too high.” From that single fact, all things flow. In fact, it is the most dominant fact in automobile insurance today. All of the evidence before us, and the message from the public, was to the effect that this was the most critical thing in the minds of people who had to buy automobile insurance.

I would also remind the committee that in our first hearing we pointed out that the system was broke and you had to do something. It had been the intent of the board to look at no-fault, to look at other schemes of insurance, because we knew that to go on the way we were was totally unacceptable and could not meet the objectives that the public was bringing forward to us.

Throughout our hearings—and just for your reference, for the record, it is page 39, 3.10—“As stated in chapter 1, the evidence before the board, in this and all other hearings, indicated clearly the existence of a perception on the part of the public of an affordability crisis.” As a matter of fact, that was one of the things that we heard from Mr Kormos and also from Mr Runciman. That is the thing that had to be addressed. We have given all of the references there of all the people who said that, and there is an affordability crisis.

It was probably best brought together in the simple statement by the counsel we had to the board, Mr Rogers. He stated, on that same page: "The fact that the perception exists...is enough. That dominant fact throws a shadow over all of the evidence which the board has heard, and I submit with respect that we are kidding ourselves if we do not assess the evidence against that omnipresent backdrop of affordability."

I would like to share with you a couple of things which came out in the hearings that were quite important. One of them is a quote that came from a study from Mr Perry. Mr Perry was the associate general counsel of State Farm Insurance. He was present when Keaton and O'Connell began the concept of no-fault insurance in the United States. This is what he had to say: "Their message was essentially that the insurance premium can be utilized to greater value for insurance policyholders. It was their proposal that the system be reconstituted from the liability insurance component, and putting those dollars back into a system of first-party benefits."

The question that arises is, why did they do that in the United States? They did it for some reasons that we have done it, and I suggest to you that when you think about this problem, you have to think about the philosophical base from which it originates.

This province has already decreed that there will be compulsory coverage, so you started to step into the social area the moment you did that. The major reason why the United States went to it was for social reasons, to spread the benefit around among other people, among all of the insureds, to give some type of equality of treatment.

Today in this province, and the evidence before us from the people was very clear, automobile travel has become as much a social as a commercial transaction. It is probably the most demand-responsive form of transportation that we have. Suburbs have been planned around the automobile. One in four jobs is associated in some way with the automobile. The seniors, and we had many of them who appeared before us, said, "It gives us freedom and it keeps us independent, but for goodness' sake keep it affordable." For small business and commerce it is the mobility they need. From others we heard that the automobile has become an extension of the family. For youth it is the rite of passage.

1040

It is interesting to reflect on what Quebec did when it brought in no-fault. It was Madame Payette and le Parti québécois. We had witnesses

from Quebec before us and they said, "We started off on the basis that we wanted to get more of the premium back into the hands of the greatest number of people." They came up with a philosophy in their government, which was the social democratic philosophy.

They wanted to achieve three fundamental things: the first was minimum medical help for all people. They said, "Why should it be that for a momentary inattention a person should be denied medical benefits that go beyond what OHIP or anything else might do?" Of course, they have a similar thing in Quebec. That is the first thing.

The speed of the paying of claims: They are so integrated in their society that if you have an accident on a highway in Quebec the ambulance informs the insurance company and the hospitals are informed. It is a total integration of the system. The other thing is that they are now returning far more in the way of premiums in the course of claims.

In the US, no-fault was introduced for the practical reasons I have stated to you. It is a system of paying benefits and herein comes the rub: there must be balance in the system. You can only pay out those benefits balanced against the premiums you bring in. It is as simple as that. If the most important thing is to keep the rates down, then I suggest you have to look very seriously at what those benefits are.

This caused us to bring forward recommendation 9, which is the most pertinent recommendation in this report. I refer you to it. It is on page 6: "While the implementation of the enhanced no-fault benefits is desirable, this could be accomplished within the framework of the existing system. On the other hand, without adjustment to the current system, the additional benefits could not be provided without premium increases." That is important to note. "Whether the enhanced no-fault benefits should be financed by means of a reduction in the level of recovery of injured persons who are not at fault is a matter of public policy."

Only you, as legislators, could decide that. That is the balance you must strike in everything you do with regard to no-fault insurance.

It is interesting too that a lot of the things that were in our report, and I can go through them item by item, are indeed covered by the OMPP. The question is whether or not you think they have been adequately covered. One thing the government did not do, and thank goodness it did not, was it did not do as New York and New Jersey did: the introduction of no-fault in those

two states was accompanied by a reduction in premiums.

In New York they were not at a rate inadequacy level, but they brought it in and they reduced the premiums by between 12 and 15 per cent. It took them about three years to catch up. One of the great battles they had was in the collateral source rule with worker's compensation, where it has been going back and forth whether it is first call or second. They were not that badly off, and New York is probably the model state as far as regulation is concerned. New Jersey on the other hand tried to do what New York did. They had rate inadequacy of somewhere around 13 or 14 per cent. They brought in a 16 per cent reduction and they still have not got it right.

At least, in all of the things we did, we pointed out that this was a myth. No-fault insurance by itself will not necessarily reduce premiums. What it will do is it will tend to contain them, because for the insurer it is far more predictable on the first-party basis what the cost should be.

My 15 minutes is up and I have not even started. There are things on the Facility. There are some very classic quotes in here. Let me paraphrase just one of them before you have a go at me. One of the reasons why the public wants to have insurance kept down—there is a magic margin. It has to be under double-digit; in everything we heard it had to be under double-digit.

There was a study by the Department of Transportation in the United States in 1985. It pointed out one of the great difficulties with automobile insurance and it was this: you can expect to have a property damage accident once in 11 years and you can expect to have an accident on a bodily injury claim of some type once in 23 years.

To the average person who is paying the premium there is no certainty of ever recovering it, so there is the thought that goes forward on that. It is different from life insurance. At least you are going to claim. You are going to die; that is certain. But there is no certainty you are going to have an accident. The great difficulty in all this is that perception. It is not going to go away and I think the public has got to the point, certainly in all of the things we have heard, that this is the most critical point. If you do not achieve that you are going to be in trouble, irrespective of what government happens to be in Queen's Park.

I am in your hands, Mr Chairman. I would love to come back.

The Chair: Thank you, Mr Kruger. It is a lot like heaven. It is a nice place to go but not too many people want to die to get there.

Mr Kormos: I do not know whether you saw the newspaper report of 23 December 1989 in the Toronto Star. Jack Lyndon from the Insurance Bureau of Canada appears to have been quoted and was the source of a whole bunch of information contained in that little article. What it did was it talked about how the government was forcing this no-fault scheme on the insurers. That is not what I want to ask you about.

It talked about the losses the auto insurance industry had. I do not have anything to compare it with for the years 1988-89, but it talked about the losses in 1987. It talked about \$142 million in losses. What shocked me about that—I have to tell that you I have read, honest, everything the Ontario Automobile Insurance Board has ever published and I have read it enthusiastically.

Mr Kruger: I am impressed. I feel humble in your presence.

Mr Kormos: Bless you, and I tell you that was the unabridged version. In any event, what I read from the OAIB's report was that in fact the auto insurance industry, notwithstanding what it might have tried to tell the whole world, did not lose money in 1987, that there was a return on equity for the year 1987. How can that be? How can the IBC say it lost money but the OAIB says it did not?

Mr Kruger: I think you have already raised this before this committee and I did catch the quote. The fact of the matter is that there was a figure of \$400 million that was being quoted by the IBC and we were very, very critical of the IBC for quoting that figure. That was an accurate figure, but it talked about underwriting loss, and you will recall that from that hearing.

When you put to that underwriting loss the amount of premiums that came in and you invested those premiums it came down that the \$400 million—this is in the 1987 report—disappeared and there was a return on equity. The best that we could get, because our data were very poor, as you will also recall, was something like about 3.2 per cent on the automobile portfolio itself. We had also calculated that in total the property casualty insurers were making something like a return on equity of about 13.6 per cent in that particular year. We did not have the advantage of the 1988 figures.

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One of the great difficulties in insurance is that it is cyclical in nature. One of the problems we

had in bringing in the rates, which were going forward prospectively but based upon 1987 data, was the fact that if you traced the history of claims, in 1987 the claims went right up. We were thinking the cycle was such that they would go down in 1988, but they did not; they maintained. However, I think we are coming towards another part of the cycle and they are probably on the way down.

The answer to your question is yes. The board was critical of the way the insurance companies presented their figures. I must say that since then they have been talking about return on equity and they have been putting in the factor of investment income. As a matter of fact, the chief executive officer of Royal was very strong in saying that is the way they should report results.

Mr Kormos: I recall one of the experts, an expert that was relied on extensively by the board, was Mercer and its actuary who came up from New York City to do her work up here.

Mr Kruger: Yes.

Mr Kormos: I know that people tried to criticize her and the fact that she and her company had been retained by virtue of the fact that she was an American, that she had no sensitivity to the Canadian insurance environment, that she was imported expertise, that she was not a Canadian. I trust the board had no difficulty in dismissing those criticisms and recognizing that notwithstanding she was not Canadian and was not entrenched in the Canadian system, her expertise and her comments were none the less valid.

Mr Kruger: Yes. You should also know that she also happens to be a fellow of the Canadian Institute of Actuaries, so she is very knowledgeable. There were other people in the firm. She was like the project leader. I think you are referring to Irene Bass.

Mr Kormos: Yes.

Mr Kruger: She came up, but you must remember that we were obliged under the act to get an actuary to bring in what they thought. She was subject, as you will recall, to some of the most excruciating cross-examination by everybody. If you are asking whether she had expertise and was that expertise good, I can only look as an adjudicator to the challenge that was given to that expertise and it held up.

Mr Kormos: I appreciate your saying that.

As a matter of fact, an incredible bit of expensive propaganda appeared in the *Globe and Mail* this morning. Drivers across Ontario are paying for it, so I hope they get a chance to read

about it. One of the things it talked about was the incredible cost of lawyers to the insurance system, and they plucked a figure out of the air of some \$500 million.

I am mentioning that because Osborne determined that in Michigan the so-called no-fault system there generated a whole lot of what I presume is expensive litigation when people had to fight with their own insurer: first-party litigation, "litigation in which an insured sues his own insurers, usually over the nonpayment of no-fault benefits." They found, "Interest penalties do not appear to have been a very effective deterrent to abuse of the first-party system."

Do you disagree with that observation by Osborne of the Michigan experience?

Mr Kruger: You must understand that Mr Justice Osborne's report was made at a point in time that predated our report and our evidence. If you look in our report at pages 49 to 51 there are two interesting things that occurred.

First of all, there was a case called Cassidy in Michigan. Let me start at the objective of Michigan. Michigan's objective was always to have only 10 per cent get through its threshold. The Cassidy case which they were going along codified that 10 per cent and it became the classic case. Then along came the DiFranco case, which occurred after that. The Cassidy case was heard by a judge and he made the ruling on the threshold and the codification. DiFranco upset that and said, "All of this should now be on the part of juries."

Since that time, there has been some problem and the lawyers have said, "Okay, now we can go forward and represent our clients in a much greater way than Cassidy."

However, in Michigan they said they were watching if there was any slippage in this. They said that one of the great battles now was going to be over the threshold because it was a jury matter. One of the things we have said in our findings, which I was pleased to see the Ontario motorist protection plan do, is that these matters will be decided by a judge.

Let me give you the example of New York. We had witnesses from the defence and from the plaintiff bar, both of them, and in New York it has settled down because the system there is just a little bit more stringent in the courts than what it seems to be in Michigan.

Ms Oddie Munro: I am very interested in your comments that as you deliberated with the board and invited people to the hearings, you looked at the social aspect of what you were doing and in fact looked at the human face in

regard, for example, to rehabilitation, speed of recovery. To what degree do you feel that responses from the individual client who has been involved in the accident came into your deliberations?

I guess what I am worried about is that the prior person who appeared before our committee was really concerned that the people who draft legislation may fall prey to having to put human considerations to one side. I just wonder if you could assure me and her that in fact, when you are looking at the bottom line, all of these other things have also been taken into account.

Mr Kruger: I must say that what you have to have is that you start off with the idea you want to have balance in the system. In our reference hearings, yes, we heard a lot about the benefit levels in Michigan. I think you heard from the Advocacy Resource Centre for the Handicapped yesterday and it was of course before us as well.

In regard to those benefit levels, you have to start somewhere. In the history of New York and the history of Michigan, New York hiccuped its way through about six or seven years because each two years it had to make modifications as the system got working.

Each regulator has had a history of making refinements as it goes forward. We are starting off into a field that is somewhat unknown in this environment. Let me deal a little bit with some of those benefits. I think there is a lot of concern, particularly on the rehabilitation side, that there are certain limits, but you can only go so far in this as you start off.

One of the things about this act that I think is very important to remember is that on this new commission there has to be an internalization going on continually as to whether the benefits are adequate, and it is up to it to make recommendations to the government accordingly.

I can understand where ARCH is coming from, but by the other token you have to start off somewhere. One of the problems Michigan found with the unlimited benefits, for example—this is in the rehabilitation—is that it had to set up a catastrophic claims fund because the reinsurers would not reinsure the insurance companies, because they saw this as a big bog. Now that they have the experience, they are in the process of dismantling that, but that fund, when we heard the evidence before us, was \$1 billion in the red.

When you come to such things as indexing, that was not an issue before us. It was in our reference, but all the remarks we heard were,

“Well, at least you are giving us indexing,” that type of thing.

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There was very interesting testimony by Mr Hunter, who was representing the Consumers' Association of Canada. He pointed out that this was a very essential thing, that for the first or second year, the impact is not that great, but it is something you have to be very conscious of as you look at the future. You have a couple of ways of handling that. You can either index it or else you can watch it as it goes along two or three years and bump it up. You can do it that way. But it all has to be kept within balance within the system. So the short answer is yes. As I look at this, I think it is a fair start. It is a good base to work from, recognizing that it is not etched in stone.

Mr J. B. Nixon: I have a very quick question. Mr Kruger, we appreciate your coming. I understand Mr Justice Osborne was before the board. I understand he gave testimony as to his perception of the state of affairs when he wrote his report being at odds with his perception now that new cost information had come out through the OAIB. I understand he suggested that given the fact that costs were continuing to escalate, the only solution was to reduce third-party bodily injury costs somehow. That was his testimony. I can refer you to the transcript.

Mr Kruger: Yes. That is quite correct. However, I would have to say he was not in favour of no-fault.

Mr J. B. Nixon: I recognize that.

Mr Kruger: He is certainly on the record for that. But one of the things in his report that was different at the point in time when we did our report is—and he had a basis for saying this. He honestly believed that the cycle was such that it was on the downswing with regard to it. He says, therefore, a lot of these benefits which he was suggesting as first-party benefits could be paid for. That was a very honest judgement made by Mr Justice Osborne based upon the facts that were in front of him.

The facts in front of us stated that that could not be so. You are quite right. He did say, based upon that, there has to be some way found of reducing the third-party claims because they are tracking at about 13 per cent per annum increase, so this gap is widening. At the time Mr Justice Osborne was before us, there was rate inadequacy in the system—this is on pages 165 to 169 and we went into great length about that—of some 25 per cent.

Mr J. B. Nixon: What is that rate inadequacy?

Mr Kruger: The rate inadequacy there is when you prospectively go forward and you look at the companies with the reserves that they have established, the IBNR, that is, incurred but not reported, they have established and so forth. For those companies to remain in business per se, somehow or other that has to be covered. That has to be covered in some way.

Mr J. B. Nixon: What was the amount of the rate inadequacy that the board found?

Mr Kruger: Around 25 per cent at that point in time. It might be helpful to talk to this particular point. When we made our judgement on the rates—and there is one good thing about this legislation. You do not have age, sex and marital status, which the act said we had to eliminate, which made the dislocation out of all proportion—when we did it, we figured, as best we could, that the rate inadequacy was about 17 per cent, but that was based not upon looking at it prospectively, by looking at it in what they call the least squares fit.

But we had hoped that 1988 figures would go down and they did not. So the rate inadequacy continued, which would have to be allowed for. That is why we put the benchmark at 7.6 per cent and said you could go up to 17 per cent. So the rate inadequacy, when we did this particular reference, was around 25 per cent.

The Chair: I am going to have to interrupt there and thank you very much for your presentation. We may take you up on your offer at some future time.

Mr Kruger: Thank you.

The Chair: From the Allstate Insurance Co, Terry Kelaher, president.

Can we be of any assistance in terms of 15 minutes for the presentation, if possible, allowing for 15 minutes of questions, comments and discussion? You have the committee for the next half-hour.

ALLSTATE INSURANCE CO OF CANADA

Mr Kelaher: Thank you very much. That would be fine. As mentioned, my name is Terry Kelaher. I am president of the Allstate Insurance Co of Canada. We appreciate this opportunity to meet with your committee because we are very eager to help in finding solutions to the Ontario automobile insurance issue.

Allstate has been in business in Canada now for 37 years. We currently service almost a million policyholders in the various areas of

automobile, personal property, life and commercial insurance across all provinces and territories. We are a major writer of automobile insurance in Ontario, representing approximately 226,000 policyholders. We employ over 1,400 people in Ontario, including 271 exclusive agents, and are also represented by 220 independent brokers.

Allstate has incurred substantial losses in the private passenger automobile business in Ontario since 1985, even after the application of investment income. Those losses are as follows: \$7.3 million in 1985; \$23.1 million in 1986; \$14.7 million in 1987; \$18.4 million in 1988; and our nearest estimate for 1989 will be in the \$18-million range. I comment again that that is after the application of investment income.

The continuance of these adverse loss trends over many consecutive years combined with consumer concerns about the resultant premium increases have prompted us to submit briefs and position papers to the various task forces and committees established by the government in order to participate and contribute to any and all solutions available. In our opinion, the main features of the Ontario motorist protection plan, as proposed in Bill 68, come closest to satisfying the needs of most interests, as I will now try to explain.

In our view, the proposed changes represent a reasonable compromise to the various alternatives put forth by us and the many other participants. Allstate would have preferred a pure no-fault system as opposed to the modified no-fault system contemplated in the OMPP. However, the modified no-fault proposal is a reasonable compromise, one which we, and we believe the industry, can accommodate and one which will definitely benefit the consumer in that it will allow for enhanced benefits to be paid in a more timely fashion. Costs now incurred for legal services, we believe, will be diverted to consumers in the form of enhanced benefits.

In many respects, the proposed initiative is not too dissimilar to the Michigan program, with which our United States parent has had considerable experience for over 10 years. Michigan evidence provided by our parent company at prior hearings can be available to your committee, should you wish.

Retaining the present tort system in the province will lead to a price the consumer is unwilling to pay. Our customers and other general consumers within the province have told us this during the various focus groups that we have held over the past year.

The rapid escalation of claim costs, primarily as a result of the existing tort and judicial system, has created extreme pressure on the price of auto insurance.

Recent debates have left little doubt that to address and resolve the price issue, we have to devise a system that provides for a more effective means of controlling escalating claim costs. The Ontario motorist protection plan, for the most part, addresses this fundamental issue.

We are confident that the changes introduced by the OMPP will therefore be of substantial benefit to the consumer with a claim system that is fairer and faster and with premium charges that are more stable, predictable and explainable to our customers. It also has the potential to finally allow us some positive return on equity.

A lot of myths and misconceptions exist about no-fault insurance and the OMPP in particular. Contrary to what some critics would have us believe, no-fault does not mean, nor does it imply, that no one is at fault in an accident. No-fault only deals with the method in which claims are handled and paid. The OMPP no-fault proposal has as its main attribute a higher level of injury benefits paid, without regard to fault, with some limitation on the right to sue.

The laws of the road will still apply in the determination of the cause and the fault of any accident. Drivers who are deemed to be at fault will still pay a higher premium than those drivers who are accident-free or not at fault.

Making certain that the public understands this fundamental point is one of our key challenges in the area of communication and education, but it does not stop there. Consumer information and education also need to address the first-party system and direct indemnification. We have to explain how fault will be determined using the settlement chart method. We need to address the guaranteed benefit issue, consumer protection and accident prevention.

We believe and presume that many of the participants in these hearings will talk to the bodily injury aspect of Bill 68, and for that reason we have chosen to address primarily the first-party delivery of property damage and the dealings of property damage losses as opposed to reworking the area of bodily injury. We believe that this is a major feature of the new plan and one of our biggest opportunities, in that we will now deal primarily with our own insureds in the settlement of their direct-damage losses.

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The insured and the insurer should both benefit as we move from a third-party to a first-party

system, a move from an adversarial relationship to a benefit world. With direct indemnification, insureds will always look to their own insurance company for payment of damage to their vehicle regardless of who is at fault. For the insured, a first-party system should mean hassle-free, prompt handling of their claims. For Allstate, it is our chance to prove to the insuring public that the protection and service we promise to provide is there when needed and that it is worth the premium they are paying.

Some of the key advantages of direct indemnification are as follows:

Elimination of the subrogation process: Insureds will no longer pay out deductibles and await recoveries. Administrative savings will accrue to the system with less investigative and processing costs. For example, at Allstate we currently dedicate the equivalent of nine employees for the purpose of shuffling \$24 million per year with other insurers, a practice which in itself does not result in any benefit to our customers.

Improved claim service, claim cost controls and claim efficiencies: Service facilities, such as drive-ins, will be expanded to provide prompt inspection and draft issuance, with substantial cost-control opportunities.

We believe we are already an efficient supplier of first-party claim services. In Quebec we are currently the only company-owned appraisal centre in the Quebec industry drive-in network.

Under a first-party system, an insurer must pay its own costs rather than its competitors'. This creates the potential for more competitive market positioning as insurers reduce superfluous costs and have the opportunity to improve their own efficiencies.

We have experienced first-party delivery of property damage in Quebec since March 1978. In the 10 years following its introduction, the average cost per claim in Quebec has increased by 70 per cent. During this same period, the average cost per claim in Ontario has increased by 138 per cent. In fact, the average cost per claim has increased at a faster pace in Ontario than in Quebec in each of the 10 years except for 1984.

Throughout the 1970s and up to the introduction of direct indemnity in Quebec, the average annual change in claims costs was comparable in both provinces. We refer you to exhibit 1 for that information. We believe these favourable results in Quebec can be credited in part to the presence of an industry-wide network of appraisal centres, which of course will be available to us under direct indemnification in Ontario.

Implementation of model year vehicle rating to stabilize price changes: Under this system a customer sees changes in his property damage, collision and comprehensive premium only when he changes his vehicle. The need to take rate increases is lessened. For example, in Quebec, where we use this system, we have not taken a rate increase since December 1986 for these coverages.

Better allocation of premium according to ability to pay: Under the current system, an insurer is repairing the average car on the road. Under direct payment property damage, the insurer knows that it will be repairing its own insured's vehicle and can therefore charge a commensurate premium. This means that owners of older and less damageable cars will pay relatively less in premiums. Conversely, owners of new and expensive cars will pay relatively more.

The percentage of fault in an accident will be determined through the use of a settlement chart. This is the system that has been used in Quebec for several years now and is working very well, and of course it has been used as well in Ontario but not formalized until this bill.

If an insured does not have collision coverage, for example, he will be reimbursed for his damages to the extent that he was not at fault, as determined by the settlement chart; that is, if the insured is found to be 25 per cent at fault and 75 per cent not at fault, he will be reimbursed for 75 per cent of his damages by his own insurer.

Of major importance to our consumers will be the availability of optional coverages tailored to the needs of the individual. The consumer does not yet understand the significance and magnitude of these enhancements because most critics have focused solely on the limited right to sue and have ignored the enriched benefits to which all insured drivers are now entitled.

There has been little reference to Bill 68's provision for mandatory optional coverages. Most critics cite only the basic \$450 weekly limit, with no reference to the provision for adding excess coverage for those individuals who require it. We believe we will be asked to, and will, provide additional optional coverages for those individuals earning salaries in excess of the basic amount and also for those individuals who may wish to purchase indexation of their losses.

Other challenges and opportunities offered to us as part of the Ontario motorist protection plan are that insurers are now required to deliver the no-fault benefits promptly and efficiently. If we

do not perform well, we could face heavy fines and penalties in addition to losing the opportunity to enhance our image with our own customers. We do not intend to lose on either account.

There are many other measures designed to protect the insured:

Although tied selling, as mentioned in Bill 68, is going to be eliminated, we believe that the provision for personal effects in vehicles and the provision for mandatory payment plans could encourage customers to prefer automobile and habitation policies purchased from the same company.

It will now be possible to exclude drivers from a policy so that good drivers will not be penalized by bad drivers living in the same home.

Our industry has to do a better job in the delivery of the product than we have in the past. We recognize that. The consumer demands it and we expect the insurance commission will see that we do. This means that we will have to educate and communicate as we never have before.

Reducing the risk by helping to prevent accidents must be a priority item for our industry, the government and, of course, the public. It is encouraging to see that the OMPP addressed this issue by introducing specific measures aimed at accident prevention.

No other company has worked harder promoting air bags and passive restraints in an effort to reduce deaths and injury in collisions. As a matter of fact, Allstate currently offers a 30 per cent discount on accident benefit premiums for vehicles equipped with air bags and will continue to do so.

We substantially support the Traffic Injury Research Foundation of Canada and various other driver education programs. We have worked for years demanding laws that would require improved car bumpers. We campaign aggressively against the drunk driver and we were a major sponsor of the recent red-ribbon campaign by PRIDE, People to Reduce Impaired Driving Everywhere.

We have a long history of supporting traffic safety initiatives and believe that they are absolutely essential in bringing automobile insurance premiums to an acceptable level in Ontario. Consumer advocates and educators are looking to government and industry to take an active role in vehicle design, repair cost reduction and other similar loss-prevention areas.

We can no longer accept that we are merely a pass-through industry, one that collects premiums to pay losses over which we have no control. We must continue to be leaders in developing

loss prevention and fraud detection. We must use our newly improved data to influence car manufacturers. We must be proactive in controlling and reducing our loss costs.

In conclusion, we support the Ontario motorist protection plan. We believe it provides a reasonable balance between the costs consumers pay now and are willing or can afford to pay and the level of compensation society demands for injured victims; it provides for faster and more adequate claim payments with much less inconvenience; it provides all injured victims, irrespective of fault, with adequate benefit levels while continuing to allow those who have both serious and permanent injury recourse to the courts for greater compensation if the accident was not entirely their fault; it provides for a high level of consumer protection and encourages driver safety and accident prevention measures. In our opinion, the OMPP is a workable solution to the rapidly escalating auto insurance claim costs and resultant premium increases.

This concludes our formal presentation, and I am happy to answer any questions from the committee.

Ms Oddie Munro: I am interested in your reaction to the statements of the minister, the ministry and various other people who have appeared before the committee on the process that will ensure that rehabilitation for emotional, psychological trauma is provided to the client quickly and with compassion. Certainly, the claims and the evaluation by the insurance company—I would think that you would see fit to involve professionals from the wider community. That seems to be part of the fear, but there are lots of other people who have appeared here who have voiced other concerns and recommendations. How do you intend to involve the professional community in the claims assessment and rehabilitation services?

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Mr Kelaher: I cannot be specific, because I have not been and am not party to all of the action plans that our claims people have at this stage, but I can assure you that we have been spending a great deal of time on that very question, and for two reasons. First, we recognize that in this world, and certainly in the new world, we are going to have to perform on a first-party basis to a greater degree than we may have in the past. We are getting rid of the adversarial-type environment, and we hope that in an honest fashion we can provide the level of benefits necessary to our consumers. That may sound like motherhood, but it happens to be the way we feel about it.

The second reason, which is a bit more specific to the issue of our staying in business, is that we are going to be under very close vigilance, I suspect, by the world at large, including the commissioner and everybody else who will be involved in regulating our industry. We are well aware of the fact that if we do not do the job properly in this area, we are going to have changes to the existing legislation which will result in higher premiums, which are not something which we particularly wish to look forward to, and it is going to do discredit to our industry in not being able to fulfil the promises that we have made in attempting to develop these kinds of programs.

For a very good business reason, we intend to live up to that particular situation and utilize the expertise that is available within the community. I would be happy to let you know as we progress what those action plans are within our company, but it is something we are spending a fair amount of time on as to how we are going to deliver.

Ms Oddie Munro: It would appear then that you are willing to monitor all of the concerns that have been and will be presented to you, because I just sense, and I do not know if you have been following it, that is one of the real key issues among the outside rehab professionals.

Mr Kelaher: We had anticipated it from the time that we had the opportunity to see what was going to be contained in the bill that this would be a major area and we have been dwelling on it since then in terms of our capability to deliver that successfully.

Mr Velshi: On page 2 you refer to the losses that your company has sustained, even after the investment income. Yesterday we heard from two companies. Both of them have posted losses in some years and profits in some years. You are showing a consistent loss. Can you explain that?

Mr Kelaher: I cannot explain it vis-à-vis the other companies because I am not party to their situation, but it may well have to do with the fact that Allstate's portfolio in Ontario tends to be more heavily weighted in the urban areas. We have a much larger percentage of our business in Toronto and Hamilton, Windsor and Ottawa, as an example, than we do in some of the more rural communities. Other members of the industry within Ontario tend to have a broader-base portfolio of business, and we know that the losses in Metropolitan Toronto, Hamilton etc have been considerably more severe than have those in other areas.

As you know, we have had rates frozen since 1987 and the increases that have been allowed

have been across the board. We have not been permitted to deviate and charge higher amounts in the areas where we have had this most serious loss, so I suspect that is part of the reason.

Mr Velshi: In that respect, you will agree that the eight per cent increase in urban areas and zero per cent increase in the other areas is feasible.

Mr Kelaher: Yes, it is, and even with our particular weighting, we find it is something that we can certainly accept.

Mr Kormos: Obviously, a whole lot of people were making profits in 1987, because the gross profits for the industry were there, and your company was not. I am not going to extend real heartfelt sympathies, because notwithstanding that you lost money—you tell us, at least—in 1987 and 1988, you still saw your way clear to give some of your drivers premium dollars—well, not some, but \$3,000 in 1987 and another \$3,000 in 1988 as a donation to the Liberal Party. I trust you maintained form for 1989.

Mr Kelaher: I am not party to those numbers, but we, like I expect most other members of other industries, when invited, do attend fund-raising activities for those parties that support the free enterprise system.

Mr Kormos: Oh, you mean you attended fund-raisers in addition. I am just talking about the contributions you made that were usual. Well, we will leave that alone.

Mr Kelaher: To the best of my knowledge, Mr Kormos, any contributions we have made as a company have been through the attendance at fund-raising activities.

Mr Jackson: Do not feel bad; he is just jealous.

Mr Kormos: Well, no, we do not expect to get money from the insurance industry, because we are not at their beck and call.

I should tell you that I am concerned about your comments wherein you indicate—I bet you give to the Tories also.

Mr Jackson: Not as much.

Mr Kormos: Not as much, and maybe not ever again.

Mr Jackson: Not as much as we need, let's put it that way.

Mr Kormos: Well, you have got some special problems, and we will leave those alone.

You talk about getting rid of the adversarial environment. I read, as I often do, the *Globe and Mail* this morning, and I was not just horrified at the state of international affairs but I was horrified at what I know to be an incredibly

expensive newspaper ad by the Insurance Bureau of Canada, and the drivers of Ontario and I guess in a few other places in Canada are paying for it. It is headed "Car Insurance: Myths vs Facts."

Obviously the insurance industry is fighting back. Even though they have been losing money for years and years, they are going to fight tooth and nail to retain control of this industry. They are not ready to give it up yet. There is some gold at the end of that rainbow. There is obviously a big pot of gold or else they would not make this type of an investment. I guess it is not hard to use premium dollars because this is what drivers' premiums are being used for.

I trust you endorse this. I trust that you participate in the IBC. In here, you talk about the media campaign of lawyers "who collect more than \$500 million a year from the current system." I trust you are talking about legal fees, including defence lawyers the insurance industry hires to keep those cash reserves intact. But, regarding the figure of \$500 million, I understand from the parliamentary assistant that the government does not have any figures that it is prepared to release yet.

You talk about getting rid of the adversarial environment. I know that you are in good hands with Allstate, and the people I talk to do not mind putting themselves in Allstate's hands, but when Allstate starts to clench its fist and not let go, they find that discomfiting, to say the least.

Mr Furlong: I thought you wanted time to ask questions.

Mr Kormos: The fact is that Osborne talked about the Michigan experience and said to forget this business about reductions in litigation and legal costs because of the experience in Michigan. We know once again—I said it before—insurance companies have short arms and deep pockets; they are more than prepared to squeeze the lemon when that lemon is the poor consumer.

People are going to have to spend big bucks and bigger and bigger bucks on litigation to try to get you to pay out what is rightfully theirs by virtue of so-called no-fault benefits because that has been their experience for the last 10 years. Now is the leopard changing its spots? Is Allstate going to start becoming more benign, more benevolent and more generous than it has been in the past?

Mr Kelaher: Is that the question?

Mr Kormos: You got it.

Mr Kelaher: I am not familiar that Mr Justice Coulter Osborne had picked out Allstate as part of his comments. I can speak only for the last two

years because that is the length of time that I have been there.

We have centralized all of our accident benefit payments in Ontario in one central unit with a view to making it as efficient as we possibly can, to deliver it as quickly as possible and to recognize the fact that the no-fault benefits, even under the existing policy, are not adversarial and therefore to separate them from those people who are involved in an adversarial involvement with third parties, the legal profession etc. We are prepared to stand behind our delivery of those benefits, certainly over the last two years. I cannot speak of anything prior to that.

I do not expect we will have any difficulty delivering the benefits of the new program. We are quite successful. We run a very successful life insurance operation, which delivers disability payments, dental claims and many similar-type no-fault benefits, and we are prepared to do so on the automobile side on a much greater basis than we have in the past.

Mr Kormos: I appreciate the referral potential under this new scheme is incredible.

Mr Kelaher: You are still in good hands with Allstate.

Mr Kormos: It is okay. You keep your hands to yourself.

Getting back to this expensive ad, I hope they are not going to be repeated because this is going to cost drivers in Ontario tens and perhaps even hundreds of thousands of dollars by the time it is over. They talk about the booklets. I know I am doing a little bit of hype here for the IBC. I want people to go out to their supermarkets—not on Sundays—and pick up these booklets. They are probably in the junk food section because they are the booklets being published by the IBC to justify this new system.

The press release that the IBC had back in December talked about the government forcing—sort of Bulgarian style—this new system on the insurance industry. Has the insurance industry not been begging for threshold no-fault? That is what the IBC submission to Osborne was back in 1987. How can you talk about being the unwilling beneficiary of the government largess when all the government is doing is delivering more than what the insurance industry had asked for—a more rigid, more onerous threshold, a more restricted no-fault component?

Mr Kelaher: First of all, I did not hold a press conference, and I am not here to speak for the IBC but rather for Allstate. As far as we are concerned, we as a company and I personally have been advocating no-fault and no-fault-type

systems for many years and that has not changed.

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CANADIAN DISPUTE RESOLUTION CORP

The Chair: From the Canadian Dispute Resolution Corp, we have Brian Gardiner. You have half an hour to make a presentation, Mr Gardiner, and I would suggest you keep it to about 15 minutes, then we can get into some questions, comments and discussion through the remaining 15 minutes. Now that Allstate is done, the committee is in your hands.

Mr Gardiner: The material we have brought along is being passed out, I presume.

The Chair: Yes. The committee members will have a copy.

Mr Gardiner: Okay. Let me start, first of all, by thanking you for having this opportunity to say a few words to you about the dispute resolution portion of this legislation. To give me a hand this morning I have Joan Fair with me, who is an associate. Joan is the director of our Ontario operations. I have asked Joan to give me a kick from time to time or to jump in if there is some information I am not getting across clearly enough that will be of some help to you.

The package I have presented to you this morning has two pieces to it. The documents inside the white folder are for your reference. I am not going to get into that during these 15 minutes. What I would prefer to do is to talk about some of the things that are going on in the field of dispute resolution and, I hope, about some of the challenges that are going to be facing the implementation of this kind of program within the context of the no-fault area.

In terms of the background of the company, Canadian Dispute Resolution Corp is a private company that is in its third year of operation. We are a mediation company that provides both a mediation service on the one hand and training for mediators on the other. We are in operation in three provinces in Canada, including British Columbia and Alberta.

The experience we have had over the last several years I hope will be of some value to you in terms of these deliberations and as you go forward towards some implementation of this kind of package. I would like to explain in essence how the current system we are using operates. I will give you a rough breakdown of how the system operates and then you can see to what extent it will be of value to this particular legislation.

I realize also that in terms of the legislation there is both a mediation aspect and an arbitration aspect, and I would like to limit my comments this morning to the mediation portion of that. It is the area of our expertise and frankly, from our perspective, it is really going to be the key for a successful dispute resolution system.

As I said earlier, there are really two elements of making mediation work, in our experience. Those elements are both the training of the mediators and the mediation service itself. The fact that those two go together is really what makes our program work as well as it does.

Let me give you some indication of what mediation can do in terms of an insurance case, for example. In the last several years we have mediated over 200 cases, mostly insurance-related matters, and we are running with an 84 per cent settlement rate in the course of those 200 cases. When I talk about that, I am talking about cases that are settled in one mediation session primarily; alternatively, there are several cases that click in shortly after the mediation session itself.

In Ontario we have been operating since last spring. The insurance industry, as I have said, has taken the first step towards using these kinds of programs and to date we have very close to 500 referrals for mediation of insurance matters. In addition to the cases that are settled in mediation, a number of cases are getting settled directly by the parties after our involvement as a neutral organization working with them.

During this last period of time, we have also, of course, been involved in the training of mediators. To date, we have trained 72 individuals here in Ontario; another course is coming up shortly.

I would like to just point out that the mediation process, as a concept, as an idea, is very straightforward and relatively simple. The challenge or the difficulty, however, is putting it into place and making it work efficiently. In addition to the training of mediators, there is an administrative component of a program like this that is every bit as important in making mediation effective.

I would like to refer you now, if I may, to some of the material in the white package. Could I ask you just to turn inside the package itself and to please go to page 5? I have presented here an illustration which I hope will capture the essence of what we are talking about when we are talking about mediation.

What this diagram shows is essentially what traditionally occurs in a civil litigation matter or a

case where two parties are suing one another; and it is referring here to an insurance case. What you have before you is a situation where the parties themselves have been unable to resolve their differences and have therefore called upon their legal counsel. These negotiations then require the lawyers themselves, responding on behalf of their clients, to negotiate a settlement of a case.

What that entails, as you can see here, is a lot of people involved in trying to communicate with one another to resolve their differences. Typically, what you have happening is this: A plaintiff may make a proposal through his counsel to the defendant, the insurance company. That particular lawyer will require instructions from his client, the insurance adjuster. The adjuster in due course may have to seek instructions from someone within the company, because of authority issues and so on. Then the system goes back in the other direction.

Negotiating in that form has its difficulties; it is time-consuming, it is costly and, of course, litigation is ongoing as a result of that. The mediation system or program that we have been implementing in the last couple of years is on the next page, page 6. Very simply, in a nutshell, what the mediation process is about is exchanging that first method of negotiating for this method. We simply bring together the parties and their lawyers in a room; they sit down and resolve their differences with the help of an outside neutral party to assist in those negotiations.

I am going to go back to those two elements I mentioned earlier. The training of mediators will be important to you and the administration of the program itself is the second element. The training, selection and identity of the people you use as mediators are paramount to a successful outcome. I cannot emphasize that enough.

I want you to appreciate also that the process of mediating a dispute is considerably different from that of being an arbitrator. Although in terms of our discussion we often will link those two together, the processes are very different and the mediator's role therefore is very different. I have suggested an illustration, although Mr Kormos has stepped out for a moment, if you can appreciate the task of a mediator—

Mr Furlong: It is not possible.

Mr Gardiner: It is not possible.

Mr Furlong: There isn't anybody in the country who could do that.

The Chair: I have been doing a good job so far. Give me a break. I may be seeing you after.

Ms Fair: We need to hire you.

Mr J. B. Nixon: Imagine this: We are both lawyers too.

Mr Gardiner: That is right. My point is that the task of the mediator is a difficult one and it requires a certain type of individual to do that and to do it well. If you have those kinds of individuals, the results, however, can be very dramatic.

The training program we have developed is an integral part of our system, mainly because it does help us identify those individuals while we are providing the training. It is on that basis that we begin working with those individuals over a period of time to assist in helping them refine their skills and, at the same time, moving on and training other individuals.

The fact that we do not use staff mediators in our system has been very helpful in allowing us maximum flexibility towards retaining and utilizing the best talent that is out there.

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It has allowed us to avoid dealing with this whole issue of licensing of mediators, for example, a really difficult area. It is one that others have been trying to work on for a number of years without a lot of success. We have been able to avoid that using this approach simply because, in the final analysis, the selection and standardization, I guess, of the mediators we are using is a very simple one and is based on the results that are achieved through the course of the mediation itself.

Moving from the mediators themselves to the administration side of this work, the work that goes into a case before the mediation, during the mediation and after the mediation really makes a difference in terms of the result that comes out the other end. There are a number of areas involved. There is a logistics issue in terms of setting up the date, the time, the place, the duration of the mediation, the selection of the mediator, gathering reports ahead of time and so on, all of which can contribute significantly to the outcome.

Having those as efficient as possible naturally is the object of the exercise as well. We also have identified the need for follow-up after a mediation as part of this process, in terms of a quality control measure and also in terms of feedback on the mediators and the process, which again goes back into refining those mediation skills I was talking about earlier.

It seemed to me, as I was contemplating coming in here to discuss this issue with you today, that those were the main things that were of paramount importance to us. The examples of

some of the efforts that have gone on before, where that kind of thing perhaps was not done as well as it might have been, have certainly led to some public criticism of other organizations that are facing similar kinds of issues, such as the Rent Review Hearings Board and the Immigration and Refugee Board. There are those risks at hand if the program the government is looking at through this legislation is not taken seriously and done with a lot of care.

By way of illustration, our organization has been in place for two and a half years where we have been building and refining these processes, so it is not something, I would suggest to you, that could be done overnight. There is going to be some need to put proper time frames and resources to make that happen.

I would like to stop there. Essentially, I felt it would be more useful for you to have as much opportunity as possible to talk about the actual mechanics or any other issues about the mediation process. One thing I will just add, though, in terms of what goes on in the mediations and some of the intricacies of the process is that I just had a phone call from CBC television yesterday. They have done a program that is coming up shortly and I thought I would mention it to you. A week from Sunday, on the program called *Venture* at 10:30 on Sunday evening, they have actually taped a live mediation of an insurance case. Unless they drop the ball between now and then, you should have an opportunity to get at least a glimpse of what a mediation looks like in the flesh.

Mr Jackson: I appreciate your presentation. It happen to be a big fan of mediation and mediation-arbitration, with the possible exception of family law matters with respect to child custody and so on because of power and balances, but I do believe very fundamentally there is an appropriate application here.

I would, however, like you to be more specific before this committee with respect to how mediation is affected in this bill, your impressions of that and the degree to which services such as yours are applicable versus those of the civil servants about whom, if I am trying to get past your arguments, you may have some doubts, as to whether they are going to be adequately trained. Could you comment more specifically about its application to this bill.

Mr Gardiner: If I could give you an example of a typical case that might lend itself to mediation, you might find that helpful. Certainly there has not been a lot of mediation of the specific no-fault kind of package we are talking

about here in Canada, but there have been first-party insurance losses where the mediation process has been used very effectively.

I can recall a case recently in Calgary that we were involved in. It was a matter involving a property loss. It was a mobile home that burned in a fire and it was well into the litigation trail or system when the parties—it was gaining a lot of adverse publicity, I might add, certainly for the insurance company involved.

It was a mobile home the insurer felt was misrepresented in the policy when it was originally written, and the insured of course felt quite the contrary. It was a fairly significant loss. There was an insurance agent involved as well in terms of setting this thing up. Those parties took that case to mediation with an extremely good result. They managed to negotiate a settlement they were all satisfied with.

It is a question of taking something that is a dispute that has arisen between the insurer and the insured where they have had difficulty in coming to grips with it. Clearly the final process that would be required is either arbitration or litigation if the parties themselves could not resolve it, but as an interim step along the way it is extremely valuable.

The results we have seen in tort cases is phenomenal in some respects, where the parties themselves have had all kinds of difficulty coming to grips with the issues and through this process have managed to resolve the conflict.

I am lost. I am sorry. What was the second part of your question?

The Chair: How is it applicable to this legislation?

Mr Jackson: You lost the first part of it too. What I am asking you is to what extent this bill speaks to mediation-arbitration and what opinions you have of this bill's content as it addresses the issue of mediation-arbitration. That was my question. Have you read this bill?

Mr Gardiner: Yes, I have and I have to confess it has been some time since I have been that particular with how it is laid out.

Mr Jackson: Could I then use up the remaining portion of my limited time to ask the parliamentary assistant the question on the extent to which the bill deals with the issue of mediation-arbitration. What is his understanding and who might be utilized in that regard?

Mr Ferraro: I will try to do the best I can and if I am missing something, with your permission Ms Parrish can fill in. Essentially, if there is a dispute on either side, either from the insured or

the insurer, they can request mediation. The mediators will be staff of the insurance commission. Trained staff, as indicated, is a necessary prerequisite to say the least. If either party is not satisfied with the mediation, the choice then is either you go to the arbitration process or you can go to court.

Arbitrators will be chosen by the advisory committee composed of a broad spectrum of the public, people from ARCH, the insurance industry, laypeople and so forth. If the individual or the company chooses the arbitration process, then the commission will make a selection from this independent list of arbitrators.

Mr Jackson: So the mediators are staffers and the arbitrators are independent.

Mr Ferraro: We can call in independent mediators if there is a case that in the view of the commission requires some specific expertise. We can, for example, have Mr Gardiner come in if he so chooses.

Mr Jackson: Where in the legislation is that reference, the option to flip out?

Mr Ferraro: That is a good question I am going to refer to Ms Parrish.

Ms Parrish: The commission has the power to retain experts at any stage in its activities and mediators are experts like any other experts such as actuaries or whatever. The point the parliamentary assistant has made is that the majority of cases would probably be dealt with by trained in-house mediators, as is the case in New York where that was found to be the most effective system. Many of the disputes are over relatively small amounts of money. It is just not cost-effective to have a fee-for-service mediator to mediate a \$500 dispute.

But there are other kinds of disputes and it is possible to have a dispute over a very large amount of money; for example, a dispute over the cost of ramping somebody's house which could cost hundreds of thousands of dollars. Those kinds of cases might be more appropriate for outside assistance.

Mr Jackson: If I can get right to the nub of my concern here, having examined and observed the case you cited, Mr Gardiner, which was the rent review evolution in this province and the difficulties in training these personnel as the process became more complex—in 1975 it was a lot less complex than it is today—my concern is the degree to which the government already has a plan in place in order to adequately train these individuals, and second, the degree to which the government examined the alternative of hiring

those services externally. Was any cost-benefit analysis done in terms of either track, because I am getting a sense that there is concern about the relative significance of the work, but no dispute in terms of the importance of making sure that people are adequately trained?

1150

Mr Ferraro: Ms Parrish has indicated to me, and it is very helpful, that the automobile insurance board indicated that the system we have adopted is acceptable from its perspective, having all the information at its disposal.

If I can answer the question, if I understood it correctly, Mr Jackson, we are without question extremely sensitive to the need to have appropriately trained mediators. In that regard it may very well be that the government will call on the services of people like Mr Gardiner to ensure that fact; I would be surprised if we did not. If we do not have good, qualified mediators, then the system is not going to work.

As far as costing is concerned, it is to everyone's advantage, and cognizant of that ultimate goal, as indicated by the insurance board and every person who comes into your constituency office and mine we are concerned about the cost aspects of it, not to the degree that we expect either the mediators on staff or the expert mediators who will be on call to be limited because of financial remuneration; if we need that expertise, we fully intend to pay for it. The consumer will inevitably pay for it and we are mindful of that. As far as specific costing is concerned, I am not aware of a specific costing for that element, to be perfectly blunt.

Mr Jackson: I think you have clearly indicated—I will tie up here, Mr Chair. You have been most generous with my time. I am concerned that ultimately the consumer is paying the freight on this configuration.

Mr Kormos: Sure he is.

Mr Jackson: I am concerned that it is simply the insurance review board that has suggested to government, "We will create a bureaucracy in order to deal with it." I am not encouraged, and you have not helped me to be relieved of any concern, that the government seriously looked at the most efficient and inexpensive method of delivery.

I will not get into the whole issue of government-run auto insurance. This is a modified version of it in this one area when in fact the commission is operating in such a fashion. That was why I was pursuing that line. I happen to firmly believe there are a lot of extremely

competent people. The evolution of mediation and arbitration service in this province is well known. We have a pool of talent out there, perhaps not willing to leave their practices to do exclusively insurance work but willing to be available to do insurance work, along with other consumer and corporate relations matters that your government has talked about, but we have really not seen that much implementation to date.

I have made my point. I was trying to link the presentation, which is basically warning us that they should be qualified, but in no way am I satisfied that we are really moving aggressively to ensure it is cost-efficient since the consumer will ultimately pay for these services.

Rent review is an example. Rent review is now up around \$60 million in administration and five years ago it was \$7 million to administer. A lot of that has occurred as a result of the complexity of the process and because we have had to train people extensively.

Mr Ferraro: I agree and I am sure all the other elected representatives agree with your concerns in those areas, but just let me say this, not to totally satisfy you, I am sure.

In the event of a mediation or unnecessary arbitration—in other words, if we feel that the insurance companies, for example, are abusing the system to delay payouts, in the legislation there is a section that would give the commission the power to say to the insurance company, "Not only do you have to pay up, but you are subjected to a penalty of two per cent per month, plus a lump sum penalty." These amounts of penalty are not to be considered in the evaluation of premiums. In other words, that is a loss that cannot be considered and the insurance commission hopefully will scrutinize that when it is setting rates.

Mr Furlong: I have a brief question, perhaps following up on what Mr Jackson was saying. Your company does not hire. You do not have staff mediators; you go out. You have heard what the parliamentary assistant has indicated, that it is the intention of the government to have staff mediators, albeit on the staff of the commission. In your experience, which system would run better? Is it a system where we would be better off leaving it to the outside, the people who practise as arbitrators and mediators, that as a practice, as opposed to being on somebody's staff and then letting the party select, or it is better to have an appointment of someone where you may or may not know who you are going to get? I would like your comments on that.

Mr Gardiner: My view is that, first of all, I certainly see a role for outside private enterprise involved with this kind of program. Certainly there is a role for the public sector as well. First and foremost, the government would naturally be expected to be involved in a regulatory function and a supervisory role. To what extent they go beyond that in the actual delivery of service, I think, is really questionable in terms of the end result and the efficiency and the effectiveness of the program.

I hear the comments that a lot of the cases are relatively small and so on. That is true, but at the same time, I see essentially outside organizations equally able to provide that service on a cost-effective basis. There may be a need for a certain amount of inside staff work done, more so than what our company has done in the past, but by and large I think the approach that we have taken is the correct one, as much as possible relying on outside resources on a case-by-case basis where appropriate and allowing ourselves maximum flexibility in terms of the total resources available. By doing it this way, you really have access to the whole community at large.

The skill and the requirements of this task will be always available to you. That offsets a lot of your scheduling problems, for example. The more you put this in-house and staff it in-house, then the more it creates problems of inflexibility in terms of resources.

Mr Furlong: Another question: I am looking at your model. You are indicating the model of mediation. You take all of the parties out with the exception of the parties, their solicitors and then the mediator. I am just wondering, in the training of your mediators, do you ever foresee the time when perhaps the lawyers will not be required?

Mr Gardiner: There are situations today where the lawyer for the defendant, for example, is not present. You have an insurance representative, a plaintiff and plaintiff counsel. That works quite well. What is important there is that the individuals who are negotiating with each other have the tools to get the job done. I am talking about the addition of tools such as having a handle on the legal side of it as well.

On a very small case, it is unlikely there would be legal representation there. If you are dealing with a matter over a couple of hundred dollars, naturally that is not likely to require that kind of expertise, but once the case reaches a point of any consequence, then in my experience, the process and the parties are better served with their legal

advisers there with them helping them to negotiate a settlement.

Mr Sola: Carrying on in that vein of thought, have you analysed Bill 68 to see whether there will be a reduced demand for lawyers? Will there be more? Any particular illustration?

It is difficult enough to foresee a situation where you would have Mr Kormos and Brad Nixon, represented by their lawyers, getting negotiation going between them, but if they had to do it directly, remove the lawyers from there, it would mean you would have to go with battle gear. Do you foresee a situation where they could actually confront each other, with you in the middle, without any lawyers to restrain them?

Mr Gardiner: That question sounds similar to the last one. Essentially, again, it will depend a lot on the situation and the circumstances. It is not necessarily value-related either. There may be matters that are perhaps of sufficient consequence to the legislation so that legal counsel will be necessary and very useful towards the resolution of that case in a mediation setting.

So I certainly see a role for the legal profession, if that is what you are heading towards, in terms of the resolution of disputes within this system or any other system. I think the legal profession has a great deal to offer if its energies are focused in the right direction. What I am heading at there is that litigation is not always the best use of the legal talent that is out there. I am making a pitch essentially for a greater use of these kinds of programs, these kinds of processes to help parties resolve disputes, whether it be in a no-fault package or elsewhere.

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Mr Sola: Do you foresee, with Bill 68, that the requirement will drop, or will it be equivalent to what it is today for the legal profession to be involved?

Mr Gardiner: It seems to me there is going to be less need for lawyers, certainly in the near future, in terms of the insurance litigation that is going on today as compared to what will come out of this. There is no doubt about that. I expect there is going to be a new role for lawyers in terms of disputes arising in determining this issue of threshold, whether a case fits or does not fit within the threshold, so there is going to be some fertile ground there for either litigation or discussion of some form of legal representation there. But by and large, I would expect that the role of the legal profession within this new proposed system is going to be less.

Ms Fair: I just wanted to add that we have had a number of personal injury lawyers who have become mediators as a result of the changes they see coming and they are working with us at this point.

Mr Kormos: You are as good a person as any to talk for just a little bit about what lawyers can do in an adversarial context.

Again, let's recognize that there are bad lawyers, there are lawyers who gouge, a million sorts of things that should be regulated, that should be controlled and that people should be defended against. But a good lawyer, first, will give his or her client initial advice as to whether or not he has a claim. A good lawyer will discourage unnecessary litigation. A good lawyer will fine-tune or focus the issues so that they are addressed more efficiently and more effectively.

The best example is the sometimes horrific results of the person who, with the best of intentions, attempts to represent himself, or even more frightening, the best intentions of a person who goes into a courtroom with a relative or a friend. He or she perhaps feels comfortable in the environment, but because he or she does not have the training, the legal background, he or she cannot focus, cannot identify the proper issues, cannot advise his or her client appropriately about: "Forget it. This is going to go nowhere. Settle now," "Settle later," what have you.

Do you agree with those comments about the efficiency that lawyers can introduce, and in many cases do introduce, to the system?

Mr Gardiner: I quite agree. Lawyers can. Although they certainly get misaligned in a lot of circumstances, they can be, and are in fact, very productive individuals within our system, certainly.

Mr Kormos: I should tell you—this will not mean anything to you, but I grew up in Crowland, down near Welland, and our approach to alternative dispute resolution was entirely different from what you people are talking about.

The Chair: Two-by-fours; that is the alternative.

Mr Kormos: In any event, at this point in my life I do not heal as readily as I used to, so I would come to you.

When you are talking about mediation or arbitration, as somebody yesterday said, insurance companies inevitably operate by the golden rule, and he who has the gold makes the rule. Obviously, an insurance company is going to

resist paying out. They are there to make money. A private insurance company's goal is to earn as many premiums and pay out as few claims as possible. Within the context of what they are and what they are operating in, so be it.

Okay, sure, for the most modest of disputes, where you want to avoid being written up in Star Probe, you go to a mediator. But where you can bludgeon the insured, when you can pound the hell out of him with lawyers and writs and motions, because they can be used effectively, by defence lawyers particularly, to discourage impecunious plaintiffs, are insurers not inevitably going to resort to that, especially when they have two bites at the apple?

If they are not satisfied with, let's say, an arbitration result, they can go on. If it works out fine, fine; but if not, they can go on to the big guns. That is when a plaintiff, once again, needs counsel and needs effective counsel, and as good a counsel as possible.

The person who is generating the cost there is not the plaintiff but the defendant, the person who does not want to have to pay out what he might rightfully have to pay out. Can you comment on that?

Mr Gardiner: I think it is important to keep in mind that when talking about a mediation process, the mediation process could not work unless there was a context for it to function in. In other words, there needs to be a fallback position, opportunity, by way of either litigation or arbitration to ultimately resolve the dispute. That threat is always there for both sides of any case, and it is the motivation to get a result without having to resort to that that will make this process work and make any negotiation work.

Generally speaking, any business, whether it is an insurance business or otherwise, is not well served by litigation. Truly, it is not. The insurance industry finds itself in litigation consistently, to a large extent because of the nature of its business. But in my view and in my experience, it wishes to reduce the amount of litigation it finds itself in, as a general business principle.

On a case-by-case basis, you can probably find a situation where they have abused the litigation system as a negotiating tactic or a ploy, certainly, and I think the same holds true, frankly, for the plaintiff's side in some situations. But in the final analysis, both parties are obliged to go to trial and some justice will be done, but it is the getting there that is the cost issue. It is very difficult. The litigation process, as you know, is very, very

tedious. It is difficult, it is hard work and it is expensive as a result of that.

What we are trying to do and what this process is all about and what the field of dispute resolution is moving towards is finding better ways of helping the parties sit down and talk to each other, communicate with each other, take away a lot of the posturing that goes on in the negotiating process and take away a lot of the need for the litigation itself without removing it. The system is still very important. Without that system around us, then we really are starting all over again.

Ms Fair: And it has been the insurers who have shown a great interest in mediation, because they are the ones who have sent us the majority of our 500 cases, so they are realizing the costs that they are incurring.

Mr Kormos: I trust you are speaking of a number of insurers. Travelers, for instance, obviously endorses you.

Ms Fair: Yes.

Mr Kormos: But you are not speaking for all of them, because you have better and you have worse, right?

Mr Gardiner: Sure.

Ms Fair: Yes, true.

Mr Gardiner: But this is a relatively new move for them, too. The use of mediation in Canada is still just getting going.

I am just going to emphasize what Joan said, that the insurance industry has taken the initiative locally here, and it is more than one company. We started with two organizations nine months ago. That number is now 10, and it is clear that they see value for themselves to sit down and work out deals with their adversaries, whether they be insureds or plaintiffs, in a more productive, co-operative, less adversarial way if they possibly can. It is good business sense to do that.

The Chair: Thank you very much. I think your presentation has been very useful in our deliberations.

The committee stands adjourned until two o'clock this afternoon.

The committee recessed at 1208.

AFTERNOON SITTING

The committee resumed at 1400 in room 151.

The Chair: I welcome the representatives of the Canadian Bar Association—Ontario: Mr Kirby, the chairman, Mr Heintzman, the president, and Miss Samworth. I will ask you to introduce yourselves to the committee. You have half an hour, as we suggested earlier, 15 minutes for your eloquent presentation and 15 minutes for comments and discussion. The committee is at your disposal.

CANADIAN BAR
ASSOCIATION—ONTARIO

Mr Heintzman: My name is Tom Heintzman and I am president of the Canadian Bar Association—Ontario. With me are Ian Kirby and Philippa Samworth, members of the insurance committee of the CBAO.

I have in front of me seven reports which the CBAO has prepared since 1986 on the issue that is of concern to this committee. These reports were made to the Slater task force, to the Osborne committee, to the Kruger inquiry, etc., and I commend them to you. We cannot say in half an hour what it has taken four years to debate and seven reports to digest and analyse, but I would request that the members of the committee read these reports; they were diligently prepared.

Let me just quickly tell you, as many of you may know, what the Canadian Bar Association—Ontario is. It is an association which represents 16,000 Ontario lawyers. It is part of the Canadian Bar Association, which represents 32,000 lawyers across Canada. One of the primary functions of the Canadian Bar Association—Ontario is to analyse legislation such as this proposed plan and comment to the government on the merits of that legislation. We have prepared innumerable reports of great length with, we hope, great diligence—certainly that is what the Ontario government has told us repeatedly—for the government and the Legislature.

In the past year I think we prepared about 37 reports on various pieces of legislation. So these seven reports are not something out of the ordinary; this is something we do all the time. This is just another example of our attempt to analyse this legislation and tell you and the government whether it is in the best interests of the Ontario public. I may say that notwithstanding our involvement in this issue—apparently this question has been asked before—the Canadian Bar Association was not requested to participate

in or advise upon the plan that is before this committee.

Before I turn the matter over to Mr Kirby, let me say a few words about what, in my view, this issue is about and what it is not about. The issue is whether this plan is for the public benefit. Our view, as you will hear, is that it is not for the public benefit. What the issue is not, in my submission to you, is whether it has any effect on Ontario lawyers. That is not the issue before this committee.

I can say that because I do not do any of this kind of work myself. I am not involved, except in maybe one or two matters a year, in motor vehicle negligence. I can tell you that the number of lawyers who make it a substantial part of their practice are a very small percentage of Ontario lawyers. About 900 lawyers are members of the insurance section of the CBAO, and we have 16,000 members, so you can see that well below 10 per cent of lawyers are involved in automobile negligence issues. So the legislation is going to affect a very small number of lawyers.

Looking at it from the other side, the legal cost to the system at present has never been suggested by any commission or inquiry that has looked into the issue to be a reason to change the present plan. There may be other reasons to change the present system, but legal costs are not a reason. As best as I can estimate it, about 12 per cent of total premiums paid by Ontario motorists are used to pay legal costs, either of insurers on the one hand or paid by insurers in party-and-party costs to the claimants who are making a claim. When you add up both sides of the claim, it comes out to about 12 per cent of total premium dollars. I suggest to you that is no reason to change a system.

I would like to turn the matter over to Ian Kirby to discuss whether it is good legislation or not in the public interest.

Mr Kirby: A great deal of time and money has been spent by a lot of different groups on this issue. The unfortunate byproduct of that has been that a large number of myths have arisen. I would like to take just a couple of minutes and go over some of the more important myths and try to expose them.

The first one is—and I think everyone recognizes this—the motivation for changing the existing automobile tort compensation system in this province is that auto insurance premiums are rising, and rising ever so quickly. It is suggested

that the threshold plan which the Ontario motorist protection plan envisages will reduce those automobile insurance premiums. However, the issue has already been examined by the Ontario Automobile Insurance Board created by this government.

The determination of that board—not by lawyers, but by that board itself—was that there was no evidence that threshold systems save any money and, to the extent that there is any money saved, the money is saved in reduced benefits to accident victims and not in reduced costs.

The government has estimated that, with its new plan, automobile insurance premiums in the next year will rise by eight per cent. It has not provided for public review how it came up with that estimate. As a matter of logic only, in the past the government has sent three proposed plans to the Kruger commission for inquiry. If the government felt that it was necessary to examine those three plans with a view to cost them similarly, why is it not submitting this plan to the same board of inquiry?

The second myth is that somehow this proposed plan will provide more benefits to accident victims. You need look no further than the Attorney General (Mr Scott), who has admitted publicly that the proposed plan provides worse coverage for automobile accident victims, and not better.

The third myth is that the OMPP protects those most affected by the ravages of motor vehicle accidents; in fact, it does the opposite. For those unfortunate individuals who have the misfortune of having the catastrophic injury that exceeds the threshold, they are still subjected to the normal rules of fault. In other words, if they are responsible for an accident which caused their catastrophic injury, they do not recover.

The fourth myth is that the no-fault benefits proposed under the new schedule of accident benefits are somehow guaranteed. What many people do not realize is that the existing policy of automobile insurance already provides no-fault automobile accidents which, at least theoretically, are guaranteed by contract. Yet anyone who has ever been involved in a motor vehicle accident case can probably tell you that in most cases those benefits are not paid. There are at this time tens of thousands of cases outstanding for collection of those benefits.

The fifth myth is that somehow the allowance of \$500,000 towards the costs of rehabilitation is a significant improvement in the existing system. Many people do not realize that at the present time the standard policy of automobile insurance

allows a \$25,000 payment towards rehabilitation and there are few cases even now where that \$25,000 is used up, and the reason for that is that most services are already covered under OHIP.

Last, there is a myth that doing away with lawyers is in all cases a good thing. What most people do not appreciate is that when someone is involved in a motor vehicle accident, that person may well seek out the assistance of a lawyer to see that his or her rights are protected. Those individuals understandably do not come to the bargaining table with the same degree of sophistication as an insurance company. The assistance of a lawyer, in helping that accident victim, does something towards balancing the scales of the bargaining tool. It should be remembered that even now there is no law that requires an accident victim to have a lawyer. If that person feels able to handle the claim himself, he is perfectly entitled to do so.

I would like now to focus just briefly on the threshold that has been proposed in the benefits schedule that accompanies it and point out some of the inadequacies.

First, by requiring an individual injury to exceed a threshold, you put the vast majority of accident victims in a very difficult position. There are clearly some injuries which at the outset will not meet that threshold. There are, equally, clearly some injuries which at the outset will make that threshold, such as someone suffering from quadriplegia. But for the vast majority of cases that kind of determination cannot be made, in many cases, for two or three years and that is not the product of lawyers' work; that is the product of the current state of medical science.

What does that person do in the meantime? Does he retain a lawyer, invest perhaps several thousand dollars attempting to determine whether or not his case meets the threshold or does he sit idly by and wait for his medical adviser to tell him whether or not his injury is permanent and serious? If he does that, he runs the risk of being precluded from bringing his action by the passing of the limitation period.

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Second, by requiring that an injury be physical in nature in all cases in order to meet the threshold, you are, in effect, legislating 19th-century medicine. Our society and our courts have for a long time recognized the legitimacy of emotional and psychological injuries. Quite apart from all else, that provision may offend the Charter of Rights and Freedoms.

Third, the legislation takes away the right to sue for someone's complete wage loss. There is no other threshold system in the world that does that. Even the Insurance Bureau of Canada was not so bold in any of its previous submissions to suggest that that should be done. Indeed, Mr Justice Coulter Osborne, who conducted an inquiry on behalf of this government in 1987, has examined the government's now-proposed plan and has determined that, in so far as taking away the right to recover the complete wage loss, it is a grossly inadequate proposal.

Given the time constraints, I will say only two things about the benefit schedule. First, the schedule proposed has failed to take into account the ravages of inflation. Most people assume that, with the rising cost of living, on an annual basis they can expect to receive some increase in their salaries or in their incomes. You are legislating that people who are victims of motor vehicle accidents can expect no such increase during their disabilities. Second, the proposal of benefits completely ignores the rights of children under the age of 16. I can think of nothing that strikes at the emotional chords of an individual more than the welfare of his or her child.

I conclude my portion of this submission by returning to what is perhaps one of the greatest myths. That is that somehow lawyers' fees are the evil and the source of all evil within the current system. I do not accept that position. If that is your position, then I suggest to you that what you ought to look at is regulating lawyers' fees. Do not throw out a system that your own board of inquiry has determined to be one of the best in the world.

Miss Samworth: Although Mr Kirby has made comments that suggest that CBA-O disapproves entirely of this legislation, we have, as part of our mandate, chosen in our paper to attempt to assist the government in amendments in this legislation if it sees fit to put this legislation through.

We have passed up to you a document entitled *Major Recommendations for Changes in Bill 68*, which briefly summarizes our recommendations. Please do not take the comments I make with respect to the recommendations as being a tacit approval of the legislation. I adopt Mr Kirby and Mr Heintzman's position in that regard. However, if the legislation is passed, we strongly request that this committee seriously consider the recommendations we have made as to changes in the wording. As I understand that 15 minutes is probably preferable, I am going to try to keep it down to about three minutes.

The Chair: Do you have a document? Are you reading something that we have?

Mr Kormos: I will give you one.

The Chair: Thank you, Mr Kormos.

Miss Samworth: These recommendations are found in the paper itself, but we have extracted them in order to make it simpler reading for you.

Dealing first with the question of the threshold, if you look at paragraph 3, the first large paragraph there dealing with Mr Kirby's complaints with respect to the restriction of the right to sue for physical injury, it is our recommendation that clause 231a(1)(b) be amended to include the exact wording that is found in the no-fault section, to include "injury which is physical, psychological or mental in nature."

Going to paragraphs 1 and 2, in paragraph 1 we have suggested you eliminate the word "permanent" from the wording to bring it more in line with Michigan. An alternative suggestion we have come up with since making that paper is to suggest that the words "permanent or serious" appear, rather than have the two required to be proven before you can meet the threshold.

The third suggestion is to eliminate the word "continuing," which will allow for injuries which can be severe in nature for a short period of time to be sued for. The word "continuing" suggests that the injury will have to be ongoing for a lifetime, and many injuries are not, but such injuries we will consider to be serious.

Going on to economic loss, our thrust in that regard is twofold, with respect to both the taking away of the right to sue for economic loss and the no-fault benefits schedule. We suggest amending section 231a to read, "In respect of noneconomic loss or noneconomic damage," in the commencement of that paragraph. That would permit an injured person to sue for economic loss irrespective of whether he meets the threshold or not. As Mr Kirby pointed out, there is no jurisdiction that we have been able to find in the world which has a threshold system that has not allowed for an individual to sue for economic loss.

Dealing with the no-fault benefits schedule, as suggested by both the Insurance Bureau of Canada in smart no-fault and Mr Justice Coulter Osborne in his paper, we suggest that \$450 a week is not enough and we should look at raising it to \$600 a week, which would bring it more in line with a fair income level for the majority of the people in this province. We have also suggested that the weekly benefit for loss of income should be indexed so we are not put in the situation we are now where \$140 a week should really be about \$360 a week.

Finally, one of the provisions in the no-fault schedule which I find to be particularly difficult to deal with is the failure to recognize the right of an individual to be considered as special or having unique qualities. Essentially, an individual's nature is obliterated by the terms of these provisions. Once someone is deemed to be unemployed under this section, he is considered to be unemployed for the rest of his life. If someone is determined to earn \$350 a week at the time of the accident, it is assumed that he would have earned \$350 a week for the rest of his life.

We all know that individuals in this province continually strive to improve their lot in life, to move into larger and higher income brackets and to change the nature of their employment in order to improve their lifestyle. The bill does not recognize that.

It is our suggestion that this bill should be amended so that some consideration could be given to an individual's ability to have increased his income subsequent to the accident. In the case of a student, the assumption that a student would only have ever earned \$185 a week is simply ludicrous. We can assume that at some point in his life a student would have managed to get a job earning some money, at least \$450 a week.

We suggest that consideration be given to amend the legislation to put in some section that allows for an increase in benefits where satisfactory proof is given that an individual would have improved his lot in life. That would be a much fairer consideration for the people in Ontario who are going to be giving up a substantial amount of money in return for possibly higher premiums.

The other consideration is the problem with children under the age of 16. That arises in the no-fault section again. The problem is that the test in the no-fault section for the benefits of \$185 a week requires that you must reach the age of 16 before you are entitled to those benefits. Therefore, a child of three years old who has sustained an injury and is not going to meet the threshold will not be allowed to sue, through his parents or through whomever, to recover compensation, nor will he get any benefits under the no-fault provisions other than the standard medical and rehabilitation which he would have under our present legislation, albeit with perhaps not the same size of benefits.

In conclusion, the CBA-O certainly approves of the enhanced benefits scheme. Let it not be said that we have not continually recommended to the government that enhanced no-fault benefits should be part of an improved insurance package. However, many of the provisions of the

no-fault benefits schedule could still be improved, and if there is anything in particular that you would like us to make some specific submissions on in terms of the wording, we will be pleased to review the legislation and give you some more detailed analysis.

Mr J. B. Nixon: Thank you very much for appearing. I also appreciated receiving your brief in advance so I had an opportunity to look at it in my office.

I would just like you to confirm that you do state on pages 11 and 12 of your brief that you accept Mr Kruger's finding at the Ontario Automobile Insurance Board that rate inadequacy as of 31 December 1989 was in the order of 25 per cent.

Miss Samworth: That was the evidence given at the hearings.

Mr J. B. Nixon: And you accept that?

Miss Samworth: Yes.

Mr J. B. Nixon: Are you also aware that Mr Justice Osborne testified before the board, and given the information that was put before the board regarding rate inadequacy and claims cost increases, which was accepted by the board—continuing claims cost increases—Mr Justice Osborne commented that when the public thought premiums were too high and there was existing rate inadequacy, which meant the premium revenue was too low, something had to give. When asked what had to give he said the only thing he could think of was the reduction in the cost of claims for bodily injury.

1420

Mr Kirby: Sir, we accept that there is rate inadequacy. We accept that something had to be done and we accept that not only as lawyers but as consumers of automobile insurance ourselves. What we say is that the evidence of this government's own board of inquiry is that the proposal that you have put forward will not have the effect of reducing cost. If that is the intention, it is a laudable one and we wholly support the intention, but the manner in which you are going about it will not have the desired effect.

Mr J. B. Nixon: Are you also aware that many studies have taken place in other jurisdictions on the issue of no-fault, tort and insurance reform? For instance, in Manitoba, subsequent to Mr Kruger's inquiry and subsequent to Mr Osborne's inquiry, a judge of the courts in Manitoba came to the conclusion that the only possible solution was pure no-fault. He had this to say, if I can read to you:

"...application of the concept of negligence or fault" in a motor vehicle situation "is fundamentally inequitable because: It can fail to compensate at all some who are entirely innocent of negligence." I am sure you have seen those situations in your practice. "It can fail to compensate to an acceptable level those who are innocent of negligence simply because the other negligent party does not have enough insurance. It will not compensate those ordinarily careful drivers who, through momentary lapse, are negligent."

What he is talking about is the lottery effect of the tort system. Those are not my words. They are the words of Mr Slater; they are the words of the Ontario Law Reform Commission and many others who have looked at the issue in Ontario. I would like your comments on the efficiency, effect and efficacy of the tort system in fully compensating all injured persons.

The Chair: I have Mr Velshi and Ms Oddie Munro as well.

Miss Samworth: I will keep my response short. Mr Nixon is quoting a justice from Manitoba to us. I can similarly quote back the letter from the Honourable Mr Justice Edson Haines, who is an extremely well known Supreme Court Justice in Ontario who reaches the completely contrary conclusion with respect to the nature of compensation through the tort system in Ontario.

Mr J. B. Nixon: So at the very least we can say there is divided opinion.

Miss Samworth: I think it is fair to say that we can differ on the issue, and the CBA-O just disagrees with the conclusions reached.

Mr Velshi: I would like to just put you at ease first. I do not think this bill says anything about lawyers. I think it is just talking about the amount of money that is going into legal expenses because of the number of cases that are going to court.

Mr Kirby: Well, sir—

Mr Velshi: Sorry, I will just finish. I have no problem with lawyers attending to anything. In fact, I do not do anything without the advice of my own lawyer, and my lawyer keeps me out of court which is a great thing for me.

Mr Kormos: Or better he should keep you out of jail.

Mr Velshi: He does that too.

Mr Kirby: But there are those who suggest that this is—

Mr Velshi: I know. I have come across it and I feel uncomfortable with that. I am not a lawyer, but I do feel uncomfortable with it because I do not think that is my viewpoint and I do not think it is the viewpoint of many of us who are sitting on this side.

What this bill talks about is that from the insurance, to keep it low or to keep it from going very high, the government decided, the people that crafted this bill decided what are the items that can be removed from there. One thing, I suspect, were legal expenses and legal fees. The other thing was the government's own taxation and the OHIP subrogation. Those are items that were not concerned with the insurance and the payouts, so I think that is where the three things have come into play.

Mr Kirby: My response to you is this, sir. We have recommended—we do not accept that the current system is without fault. There are changes which ought to have been made. We have been making those suggestions since 1985. This government has now gone partway towards that in Bill 69 and Bill 70.

But we say that if the object of this exercise, of this legislation, is to reduce automobile premium costs, it is not going to have that effect. I throw this out to you only for your consideration. But what would the effect be if one were to maintain the current tort system with all the tort changes that I think everyone agrees to?

Whether you or other members of your party will concede this or not, the decision to wipe out the OHIP bulk subrogation agreement and remove the three per cent insurance tax and other effects of this policy has the effect of granting a \$200-million-per-year subsidy to automobile insurance. That is the government's prerogative; it makes the social decisions for this province.

But if you are going to make that kind of subsidy, why not give it as a subsidy to a system that is recognized, admittedly requiring some change, as being one of the best in the world, rather than throwing the money away towards a system which its own board of inquiry determines will not have the effect of saving any money?

Mr Velshi: I think you are making a similar assumption that a lot of other people are making, that the lawyers are ripping the system off. This rebate is not going to the insurance companies. Are you not expecting that it will flow through to the insureds?

Mr Kirby: No, because again the determination of the OAIB was that the effect of threshold systems, which is what this is, is that to the extent

that there is any saving, and it is only marginal at best, the saving comes from a reduction in the payment of benefits to victims, not in a reduction of cost. So if looked at in terms of self-interest, it will have little or no effect on lawyers. The people it will hurt are their clients, the victims.

Mr Kormos: I do not know if you people were too busy this morning to read the *Globe and Mail* or if the *Globe* is not your favourite reading material, but I was aghast this morning when I opened up my *Globe*, not just at the state of affairs throughout the world but at the fact that the Insurance Bureau of Canada would use drivers' premium money to invest in this great big ad which seems to dump all over lawyers.

I find it strange to see some defensiveness now, when you folks are here saying, "No, we're not really doing some lawyer-bashing here." Lord knows it costs big bucks when you put an ad like that in the *Globe*, and I bet you there is going to be one maybe tomorrow or Saturday, whenever, the little booklets over by the junk food section in the supermarkets that people can go and pick up. This ad talks about and seems to imply that lawyers have some sort of vested interest in the system as it exists now.

My impression, from reading Osborne for instance, where he talks about the incredible amount of litigation that takes place with one's own insurer because insurance companies traditionally are really good at collecting premiums but, quite frankly, piss-poor when it comes to paying out compensation, is that they just do not like doing it.

In fact, Osborne did not just say that back in 1987 and 1988, but he is quoted December 1989 as saying, "If history is any guide, there won't be any changes in the no-fault benefits, because insurers did not pay them before and they will not pay them now." He is talking about this new scheme that the insurance companies want, this Bill 68. The quote is referred to as being said only half jokingly.

What do you have to say about that? I have to tell you this before you answer, because the insurance companies are coming here as if they were leopards who have changed their spots, as if they have gone through some sort of metamorphosis and they are no longer ugly little creepy-crawlies, but now they are beautiful monarch butterflies. They are trying to create the impression, "No problem folks, when you need money just call and we'll put the cheque in the mail." I have heard before that the cheque is in the mail.

What do you have to say about the attitude of insurance companies in paying out so-called no-fault benefits? I have a feeling lawyers are going to be making some money there necessarily.

Miss Samworth: I am going to respond to your first comment about the newspaper article first of all. I have been watching the hearings and looking at who has been coming up here to make presentations to you. Although I missed this morning, my count so far is that there are nine against this system, of which there was only one lawyers' group, and seven for the system, of which six were made up of insurers.

I think it is inappropriate for the IBC to be suggesting that it is only lawyers and their self-interests that are opposed to this particular legislation. We have had the Canadian Mental Health Association here, People to Reduce Impaired Driving Everywhere, the Pain Management Clinic, a gentleman who came up on his own individual basis to make some representations to you. As I said, we are only the second lawyers group, I think, that you have heard from.

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In response to your question about whether lawyers are going to make money out of no-fault, I think we are. Historically, insurers have been poor payers of no-fault benefits and people have had to come to their lawyers to get assistance in getting what benefits are properly payable to them. One of the reasons is that the present legislation, like the new legislation, sets up a very difficult test that one has to meet before one gets paid these benefits in the first place.

I think people are under the impression that all they have to do is get injured, be off work, and they can march in and get a cheque. That is not the case. They have to meet a test, and that test has been the subject matter of a lot of legal examination and a lot of legal decisions. If an individual goes to his insurer and is told, "No money, because you do not qualify under this test," that individual is going to go straight to his lawyer, and even more so now because he cannot sue for pain and suffering as well and he is going to want to make sure he gets those benefits.

Mr Kormos: I have a little more difficulty with the way the Liberals are trying to package this as some sort of new no-fault system, because I have read a little bit about no-fault systems. Quebec has a no-fault system. My impression is that there is nothing new about the no-fault component here. There is a whole lot of deception going on, a whole lot of smoke and mirrors, but we are talking about the same old

kind of no-fault. What is new is that 90 to 95 per cent of innocent injured victims will not receive a penny of compensation for their pain and suffering. Am I correct that there is nothing new about no-fault, that maybe there is some tinkering with the numbers and that is all?

Mr Kirby: That is true. The concept of a no-fault, loss-of-income payment already exists and has existed since, I believe, the 1960s in the standard policy of automobile insurance. All that is changing is the amount that is going to be paid. In return for that, what is happening is that you are in virtually every case losing the right to sue for anything above the no-fault benefits, which is what you can do now, and you are also losing the right to get compensation for the pain and suffering you have endured.

Mr Kormos: That is incredible. It is shocking.

The Chair: Thank you for your presentation.

From the Ontario Federation of Labour we have John O'Grady. Gentlemen, you have half an hour, and if possible, will you could keep the presentation to about 15 minutes. It would allow the committee some time for questions, feedback and discussion. We are at your disposal.

ONTARIO FEDERATION OF LABOUR

Mr Signoretti: My name is Ken Signoretti. I am the executive vice-president of the Ontario Federation of Labour, and of course John O'Grady is the research director. We will not be reading the brief as such, other than making some comments on it. John will do the technical stuff, since he is the one who originated the brief, but I would just like to make a couple of comments at first, if I might.

I guess sitting before this committee probably is going to be an exercise in futility, like all the other committees. Eventually the government is going to decide what is here and not really listen to people in terms of what is happening.

I think having said that, you have to go back to what happened in this particular case, go back to the time of the accord when there was talk about public automobile insurance. The government did not respond to it at that time, but it was elected in a majority position, forgot all about its promises, talked about the government insurance board, which recommended a 17 per cent increase, and then that was shot down by the government. The government went in a different direction, and we expect that probably this will be the same thing.

Having said that, I think we have some concerns about it. We have concerns about automobile insurance as it affects our members. With that, I would like John to make some comments on some of the issues we talked about.

Mr O'Grady: Let me first of all indicate that we are very unhappy with the current wording of Bill 68. In general, we find the legislation to be unacceptable. Having said that, let me also add that neither Ken Signoretti nor myself are lawyers.

Let me go through with you a number of the concerns we have with the drafting of Bill 68. As will be apparent from our submission, we have some principled concerns as well about the legislation.

I want to first draw your attention to section 231b, which deals with the collateral benefits, and in particular to the implication of that section which would turn disability insurance plans and accumulated sick leave credits of employees into the first sources of income replacement in the event someone were the victim of an automobile accident, and thereby make an auto insurance policy and the auto insurers the payers not of first resort but of last resort for income replacement.

It is quite possible this will have some significant implications for the costs of disability insurance plans. We have included in our submission a synopsis from a survey on the prevalence of disability insurance plans and the different types of plans that are in place in the workplace.

It is especially a matter of concern to the extent that in making the disability insurance plans payers of first resort, there is an implication for the premiums under those plans, that this will clearly flow through to the collective bargaining relationship and that employers' payroll costs will increase.

Of even greater concern to us is the proposed treatment of accumulated sick leave credits. You will note from the table on page 3 of our submission that among nonoffice employees, roughly 40 per cent are covered by cumulative sick leave credits and among office employees roughly 20 per cent. By a cumulative sick leave plan, I mean one that perhaps would be structured so that employees accumulate one day of sick leave per month and that goes into a bank, which builds up and which they typically would have access to in the event of illness, to either top up their income or to replace lost income.

Many employers allow their employees to convert those accumulated sick leave credits into a cash sum, into a lump sum under certain specific

circumstances. Typically, those are either permanent layoff or retirement. Indeed, in many workplaces the accumulated sick leave credits are an important source of income to a retiring or laid-off employee.

As we read Bill 68, it would require an employee to run down those credits before having access to benefits under an auto insurance policy. That would be bothersome enough if the language of the legislation were such that it applied to credits that were going to be accumulated after the bill goes into effect; in other words, if it were strictly a prospective treatment of those credits. But as we read the language of the bill, it in fact would apply to credits that have already been accumulated. That, we suggest, is really nothing less than a taxing or an expropriation of those credits, forcing them to be used for purposes for which they were not intended.

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We have a number of concerns, not so much with the principle of no-fault insurance; certainly in the trade union movement you will not hear strong defences of the tort system. We do have some very serious concerns, though, with the particular benefits schedule that is associated with this initiative, and in particular with the low levels, the ceilings, on those benefits.

It would seem to us that if one is going to legislate no-fault, then the ceiling for wage replacement should be substantially higher. In that regard, we would certainly draw your attention to at least an analogous situation, which is when the workers' compensation system has to deal with the problem of income replacement and ceilings. The ceilings that are set out in the workers' compensation system are substantially higher than those proposed in Bill 68. As I recall, the ceiling in the workers' compensation system is \$42,000, although of course it uses a net income base as well.

We are also concerned that the ceiling on weekly benefits that is set out in the proposed schedules is not indexed. Again, we would draw your attention, by analogy, to the way in which ceilings are treated under this government's legislation for the workers' compensation system. There the statute first sets a ceiling of \$42,000 of earnings as covered earnings for the present year. It then indexes the ceiling to 175 per cent of the average industrial wage so that at least it ensures the ceiling will keep pace, in some sense, with developments in the labour market.

We are also particularly concerned with indications from the industry that it will continue to rely very heavily on affinity group risk ratings.

In particular, we are concerned that it has indicated, in the 1989 third-quarter report of the Facility Association, that it expects the industry to increasingly rely on occupation as one of the affinity characteristics for risk appraisal. That bothers us a great deal.

We also want to draw your attention to the implications of the current wording of the bill for the workers' compensation system itself and the analysis of those implications from the board, which I believe you will probably already be familiar with. The essence of those findings was that the board will effectively lose rights it currently enjoys to obtain proceeds through litigation from auto insurers, and that therefore the cost of Bill 68, as it is currently worded, to the workers' compensation system will be an average cost of roughly \$25 million per year. Those estimates in fact are derived from the board itself.

Let me then summarize so that we can proceed to discussion. We do not quarrel with the introduction of no-fault insurance. We do not, however, find Bill 68 anything like a satisfactory model for no-fault insurance. Its treatment of disability insurance plans, its implications for accumulated sick leave credits of employees, its implications for the workers' compensation system are, to us, serious flaws in the design of the bill.

At the level of policy, of principle, the attempt to reform Ontario's auto insurance system within the parameters of private auto insurance quite frankly strikes us as the fundamental flaw in the government's approach. Competition in the auto insurance industry does not act in order to contain costs. Rather, as we see it, competition in the auto insurance industry is profoundly perverse, profoundly economically inefficient and indeed raises the costs of the system by introducing very significant distribution or marketing costs.

The approach of establishing a threshold above which tort action will be permitted will not, in all probability, significantly reduce the overall litigation costs we have seen. Certainly the investigations that have been done suggest that the preponderance of litigation costs are associated with very serious, almost catastrophic auto accidents, and those presumably would be precisely the accidents in which tort action would continue to be permitted. It is unlikely there will be significant aggregate savings in the system resulting from the particular no-fault design. There are certainly not going to be any savings in the system from eliminating the economic inefficiencies of the perverse competition that

characterizes the industry. So where will the savings come from?

We submit to you that they come from the transfers of economic resources from disability insurance, from the workers' compensation system, from employees' accumulated sick leave credits, potentially from reduced benefits for auto accident victims and certainly from the forgiven taxes and the waiving of the payments that are currently made to OHIP. Bill 68, to our thinking, is quite unsound legislation and we would urge you to withdraw it.

Mr Kormos: I have to tell you that to some people's chagrin I have been pointing out to various insurance company reps coming here just exactly how much in dollars—\$1,000, \$2,000, \$3,000 a year—they have been contributing to the Liberal Party by way of their regular annual grease. It was yesterday or the day before that somebody from the other side here said, "Yeah, but what about the money the labour movement contributes to the New Democratic Party, the OFL and its constituent members among them?"

I want to tell you this, gentlemen: It is true and it is no secret that the labour movement and the trade union movement and its membership support the New Democratic Party financially. I am proud to be here working in the interests of working people. I just wonder if the people on the other side of the room today are as proud to be here working in the interests of the private insurance industry, in view of the amount of money that has been paid to them.

I want to tell you what Mr Justice Osborne said in December 1989 about this new bill. Interestingly, it echoes what Don McKay, the general manager of the Facility Association had to say about the impact of this new legislation a little while ago. Mr Justice Osborne said, "Insurers, as a result of this new legislation, are going to attempt to write business where they know the insured has collateral benefits because then their exposure"—the insurance companies' exposure—"on the no-fault side is going to be limited."

Osborne said, "I think you will find that the unemployed and the underemployed, those without collateral benefits"—we can obviously include in those classes of people senior citizens as the unemployed, women as the underemployed, occupying large parts in the working community of those jobs wherein collateral benefits are not part of the job package. Farm labour, seasonal employees, indeed small business people are among those.

Osborne said that these people are going to have a very difficult time finding insurers who

will be willing to write their business and the incentives to writing business as a result of this, according to Osborne, will result in the population of the Facility Association expanding, as it already has.

1450

We have learned that one insurer estimated that 10 per cent of the driving population was in Facility. I think that was a little high, quite frankly, but we have experienced an incredible increase in the number of people forced into the megabucks Facility; I mean thousands and thousands of dollars a year by way of premiums, and not just bad drivers but good drivers because they are deemed inappropriate for insurance.

That, according to Osborne and according to the general manager of the Facility, is going to increase. This legislation is going to result in more people being denied insurance coverage and more people being forced into the ultra-expensive Facility, and among those the people who can least afford it. I wonder if you have some comments on that, please.

Mr O'Grady: It does seem that in the search by each individual company to maximize its underwriting profits, insurance agencies will be looking, much more so than they have in the past, to occupational affinity groups for rate determination. Certainly it would be possible on the basis of knowing someone's occupation to know the probability of whether or not he will have a collateral benefit in particular, a disability insurance plan or an accumulated sick leave plan. You know that a teacher would have one. One can certainly make pretty reliable predictions with respect to the status of collateral benefits by knowing a person's occupation.

It seems to me that from a trade union point of view the mess Bill 68 is going to create in auto insurance probably leaves us with no alternative but to take automobile insurance and put it on the bargaining table and say to the employers: "We've got another problem for you to solve. You're going to have to start providing group auto insurance."

We have no choice. When our members face a system of rate-setting which is, to their perception, so arbitrary, which may even be occupationally related, which may even be related to whether or not their union has succeeded in negotiating a sick leave plan or a disability insurance plan, the logic of putting automobile insurance on the bargaining table is overwhelming.

I am not sure that will be particularly greeted with enthusiasm by the employer community,

but the pressures on us to do that are very considerable. Any trade union organizer worth his salt would in turn use the ability of trade unions to put auto insurance on the bargaining table as a means of trying to attract new people to the trade union movement.

Mr Kormos: I cannot help but refer to that expensive ad in the *Globe* this morning, a little bit of propaganda by the Insurance Bureau of Canada, paid for by drivers. You probably know that the government's auto insurance board, the Ontario Automobile Insurance Board—taxpayers paid every single penny of that; there are no two ways about it—was asked to consider a number of threshold schemes. Now the Liberals call them “no-fault” schemes because that has a little bit of a nicer ring to it, but they are threshold schemes. That should never be forgotten. There is nothing no-fault about this proposal.

Notwithstanding some frequent pestering, if you will, of the minister in the Legislature, among other places, to throw consideration of a nonprofit, public system into the group of things that the board should consider so that it can make some evaluations, the government adamantly refused to permit any public consideration of a public system. Some proponents, ourselves included, indicated there would be a considerable cost savings as a result of that public system.

In view of the fact that the board was there, that it considered what it did, but that in the most bizarre sort of way it was not permitted to consider a public system or any number of variations of public systems, what do you have to say about that?

Mr O'Grady: The fundamental issue, from our point of view, in terms of public policy with respect to insurance is very much the question of whether it will be left in the hands of private industry or whether we will have a public auto insurance scheme. Certainly, we are four-square in favour of a public auto insurance scheme. Our reason for that is very straightforward, as I suggested in my remarks.

The social defence of the private sector hinges on a belief that competition in that sector is cost-containing and efficiency-promoting. That is a pragmatic assessment. It is well nigh impossible to show that there are cost-containing efficiency effects flowing from the kind of competition that characterizes the private auto insurance industry. This is perverse competition; this is competition that increases the costs very substantially, and those costs, in turn, flow through in the form of higher premiums and, I

suppose, ultimately in advertisements to defend the status quo.

The Chair: We have Mr Nixon and Ms Oddie Munro, but Mr Ferraro would like a point of clarification.

Mr Ferraro: I hope it is helpful. In regard to the specific presentation and elaboration from Mr Kormos of the Ontario Federation of Labour's point about the affinity groups and the concern being expressed that, indeed, insurance companies will avoid people who do not have income replacement benefit programs already in existence, that certainly is a very contentious point and a valid one.

I only wish to assure everybody here, including the delegation, that the minister has publicly said that in the regulations there will be a regulation disallowing that. The gentlemen will know that section 208, the power in the act substantiating or enforcing the regulations, is already in place. So that particular point, hopefully, will be addressed.

Mr Kormos: Very briefly in response to that, that is news. That is good news. I am wondering if the parliamentary assistant, being as close as he is to the minister and government policy, could elaborate and tell us what form that regulation will have so that we will know what to look for.

Mr Ferraro: I am perhaps not as close to the minister as you might wish or think, Mr Kormos. I think there is a height differential, to begin with. But having said all that, the regulation will be before you soon for your perusal and/or, hopefully, acceptance.

Mr Kormos: Is that a promise?

Mr Ferraro: Yes, sir.

The Chair: One has more hair than the other one, as well.

Mr J. B. Nixon: Gentlemen, you may or may not be aware, but I thought it was important to let you know that both Dr David Slater, former chairman of the Economic Council of Canada, and Mr Justice Coulter Osborne, Supreme Court of Ontario, recommended against the establishment of a public auto insurance corporation in Ontario, after going through extensive examination.

I just wanted to put on the record that there has been thorough public examination by the government on that issue in a report to the government. You may disagree with the conclusions, but at least there has been an examination.

I want to deal with two issues, basically. One is the utilization of sick leave and another one is much broader, the broad one being, my under-

standing is that you do not take exception to the establishment of a no-fault regime. You say that the principle of no-fault is satisfactory with you and what you are looking at are the compensation levels provided in this program, and you say they are inadequate. Is that a fair characterization?

1500

Mr O'Grady: Yes, it is. First of all, as a general principle, the labour movement is on record supporting the general principle of no-fault systems, so we certainly do not come before you as defenders of the tort system. Having said that, with the design of this particular no-fault system, and then even setting aside the question of public or private, because obviously that is separate and distinct, we have some very specific concerns with the benefit ceilings. We have some very specific concerns with the particular collateral benefit rules that apply in this design, and those are not quibbles at the margin, because the design of this system fundamentally turns the auto insurers into payers of last resort when there is an auto accident, instead of payers of first resort.

Mr J. B. Nixon: My response is that my understanding is that the essential position of the presenters before you, the Canadian Bar Association, was that they were not arguing about the right to sue but they were arguing about what they call the right to compensation and compensation levels, so it is a consistent theme we have heard.

Actually, I wanted one final question specifically about the sick leave. It is my understanding that it is at the employee's option to utilize the sick leave or take the auto insurance benefits. Obviously, the employee is going to take the most beneficial insurance compensation, whether it is sick leave or the no-fault benefit, and perhaps I could ask the parliamentary assistant or his staff to clarify it.

Mr O'Grady: No, that is not what the bill says.

Mr J. B. Nixon: Perhaps I could ask the parliamentary assistant or his staff to clarify it.

Mr Ferraro: I will start off and perhaps Ms Parrish can elaborate a little bit. As I understand it, when the collective bargaining—the contract, quite frankly—allows it, and particularly in regard to those who work in the public sector and, I believe, some in the private sector, the option of taking sick benefits or leave without pay is entirely up to the employee. Admittedly, that is predominantly in the collective agree-

ments with the public sector, which are thousands of employees, as I am sure you know.

Mr J. B. Nixon: Like teachers.

Mr Ferraro: Teachers, government employees and so forth. Maybe Ms Parrish has something to add to that.

Ms Parrish: It is really just a point of clarification that sick leave is treated differently from disability payments. In the case of sick leave, the only deduction is the sick leave that is actually taken. If the employee does not take the sick leave because he takes leave without pay, then he is entitled to the full compensation, either under the no-fault schedule or under the tort award, without any offset. It is only disability payments that are taken or available that are deducted, so there is a distinction between sick leave and disability payments. These cumulative sick leave plans that Mr O'Grady speaks of are treated differently from disability plans. So if it is possible under his collective agreement, or in the case of discretion where the employee has to exercise the discretion, the employee can opt to take leave without pay.

Mr O'Grady: First of all, very few collective agreements establish an employee discretion. Second, on a typical employer's books, the accumulated sick leave credits are what you would call an unfunded liability. In other words, the typical employer has not set aside money to actually meet that liability. Employers therefore look for a way to run down those credits, because they do not want them sitting there.

For one thing, they usually sit there at an accumulating value, because they are typically linked to the incumbent's current salary, which will be going up, so the incentives on an employer's part are to require an employee to run down those credits.

If the mechanism that you are relying on to mitigate the sharpness of the wording of the statute is that employees will elect not to use their sick leave credits, I think you will find that very few collective agreements will support that degree of employee discretion, and certainly in nonunionized situations the issue of employee discretion would not even arise because there would be no collective agreement.

Ms Oddie Munro: I would just like to say as a preamble that your concerns that this whole thing may be an exercise in futility are not shared by many members sitting around the committee table, although I can see why you may think about various aspects of life in that fashion.

Mr Signoretti: The reason I say that is that we have been to these hearings before, time and time again, all of them, and that is the way we have gone down the road, starting with Sunday shopping. However—

Mr O'Grady: Bill 162.

Mr Signoretti: Or Bill 162 or Bill 208 that is coming up.

Ms Oddie Munro: Then you can appreciate why I have the right to respond to your comments and your feelings. It is a value judgement, and I hope life has other challenges for you too.

In any event, one of my comments is that many groups have come before this committee to speak to the indexation question, and I think that the body of knowledge that will be accumulated around the table is helped by, again, the kind of research that you come up with from a different point of view and from a different set of statistics.

I would like to get your response to something that you have not referred to, and that is your evaluation of the dispute resolution mechanism as we have laid it out, and also your comments, because I know you are interested in rehabilitation for people back into the workforce.

Mr O'Grady: In principle, arbitral systems ought to be more efficient from the point of view of being both more expeditious and less costly than court-related proceedings, so a step to civil arbitration is probably to be welcomed.

Having said that, let me add that we in the labour movement, admittedly in a very different context, have a great deal of familiarity with arbitral proceedings and with arbitral justice. Certainly, let me assure you, on the basis of our experience with grievance arbitration and grievance arbitration administered under section 45 of the Labour Relations Act, that there are still very significant delays in civil arbitration—very, very significant delays and very, very significant costs.

I have not studied with great care any of the draft regulations that might bear on the proposed arbitral system. I would note, for example, though, that in the case of the arbitration system set up under section 45 of the Labour Relations Act, there is no fee regulation, nor is there any regulation with respect to the amount of time that may transpire between an initial hearing and a continuation hearing. Those two lacunae result both in extremely high costs and very serious delays. So to the extent that that experience with a different arbitration system, set up for a different purpose, is relevant, I would certainly offer it for the committee's consideration.

The Chair: Thank you very much for your presentation.

Next, we have the Consumers' Association of Canada (Ontario). Ladies and gentlemen, welcome to the committee. You have half an hour in which to make your presentation. If we could offer some guidance, allow 15 minutes for your presentation and then allow, if you could, 15 minutes for some questions and discussions. The next half hour is yours.

CONSUMERS' ASSOCIATION OF CANADA (ONTARIO)

Mrs Huzar: Thank you. The Consumers' Association of Canada, Ontario branch, and I as its president, welcome this opportunity to present the views of our association to the committee. You have before you, I think, our complete brief, as well as an executive summary. I would propose to read the executive summary, in the interests of time, to give some time for questions.

The Consumers' Association of Canada, the Ontario branch, welcomes the government's proposal to reform the automobile insurance system in this province. Of particular interest to consumers are the proposals designed to reduce the number and severity of accidents. These include increased driver training, restricted licensing, stricter enforcement of traffic laws, strong deterrents to drunk and drug-impaired driving and highway improvements.

The insurance improvements include the speedier delivery of claims moneys by insurance companies, the prohibition of tied selling, the new excluded-driver category and better information for consumers. The administrative change merging the Ontario Automobile Insurance Board with the office of the superintendent of insurance to create the Ontario Insurance Commission will bring tougher rules for the industry and help consumers in its new mediation-arbitration capability.

Our objections to the bill focus on the details of the no-fault proposals. While we have been a consistent advocate of bodily injury no-fault insurance over the years, our recommendation has been for a government-run, pure no-fault system. This bill's proposal of a threshold plan retains some of the worst aspects of the tort system while not addressing two of the most serious problems for Ontario motorists, those of price and availability of insurance.

Our specific objections to the no-fault proposals relate to, first of all, the threshold itself. The uncertainty as to whether or not an injury meets the threshold will open up the possibility of

additional litigation. Years of court cases may be required to establish exactly which cases are covered and which are not.

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Second, the level of benefits: Our submission discusses the inadequacy of most, if not all, of the benefits of the package. No-fault involves a tradeoff whereby the insured relinquishes the right to sue for guaranteed benefits. If the benefits are inadequate, then the tradeoff is unfair to Ontario motorists. The most glaring fault is the lack of legislative indexing. Based on the track record of the industry and of government, consumers can place little faith in promises that the benefits will be reviewed regularly.

Third, the weekly income benefits: Weekly income benefits from the automobile insurance policy should be primary. The sum of \$450 per week—and CAC recommends at least \$600—should come into play first, with other disability income benefits being used to top up the weekly payments. Bill 68 proposes the reverse of this method, calling upon other insurance first and auto insurance benefits as a top up.

Fourth, the other benefits: Our submission discusses the other no-fault benefits, noting their inadequacy in the light of present-day costs. Also, ridiculous as it may seem, the government proposal has settled for less than the amount suggested by the industry itself in its brief to the Ontario Automobile Insurance Board hearings. These proposed amounts are parsimonious compared to the no-fault benefits paid under the Quebec government plan.

Our submission comments on the problem of the unavailability of affordable insurance. This has become especially acute in the past two years, notwithstanding the government's initiatives. More and more drivers have found themselves relegated to the Facility Association—the substandard market—for no justifiable reason whatsoever. We believe that making disability benefits in the workplace and private disability insurance payments primary to the auto insurance policy may lead companies to discriminate against those drivers who have no supplementary plan. Thus, even more insureds may find themselves rated in such a way that they are relegated to the Facility market.

The Ontario government tried to set in place a new driver classification plan last year. It was forced to withdraw it when it became clear that it would be politically unacceptable. We still need a uniform, fair system of classifying drivers to avoid the inequities of the Facility rating for some normal or standard drivers. Our recom-

mendation to the government has been, and still is, the adoption of a bonus-malus rating system, which has proved successful in European countries and in British Columbia. The Consumers' Association of Canada believes that consumers need from the Ontario government good, comparative rate disclosure and a listing by territory of all companies. We would strongly urge the superintendent of insurance to publish a regular program of rate comparison information that would be widely disseminated to all parts of the province.

CAC welcomes the setting up of an arbitration/mediation capability in the proposed insurance commission. This body must contain a strong consumer advocate in order to avoid being dominated by the industry or the bureaucrats. Consumers need to be able to take all kinds of disputes to an independent body, including disputes over driver classification, premiums and claims. This will be especially important in the decisions relating to who was at fault in an accident. This problem will become even more acute under a no-fault system when one's own company is responsible for paying all the claims. CAC is concerned that more accidents will be deemed 50-50, thus earning a paid-claim rating for each driver and the loss of their accident-free records, a serious situation today.

To sum up, while there are several good initiatives in Bill 68, the consumers' association would have preferred a leap to a government-run, pure no-fault plan for bodily injury only. We believe the government has missed an opportunity to make a meaningful reform in the automobile insurance system.

We believe in no-fault, and we want it to work. However, in giving up our rights in tort, especially under the very restrictive threshold of this bill, the no-fault benefits must represent a good bargain for motorists. Bill 68 asks that we give up too much and settle for too little. The benefits must be increased and indexed. We believe it would be a serious mistake to proceed with this no-fault plan with the proposed level of benefits.

Eventually, if consumers find that the plan is unfair and the benefits are not adequate, if the companies do not deliver the no-fault payments in a fair and prompt manner, and if premiums continue to escalate as in the past, we believe the alternative must be a government-run, pure no-fault system. At that time we would recommend a close look at the Quebec system.

I want to thank you for the opportunity to present the views of the consumers' association,

and I would like to present the members of CAC's insurance committee, who will be happy to answer questions: Helen Anderson, who is the chair of the committee, and Tom Delaney.

Mr Jackson: It was a very informative brief. I would like it if you could expand a little further on the point you raised on page 4 which intrigued me with respect to the dispute resolution mechanism. I sense you feel that the criteria are too narrow for that which is to be mediated or arbitrated. Can you point to other jurisdictions where they are mediating these types of matters or resolving the disputes in these areas that we could perhaps refer to?

Mrs Anderson: Yes. They are in British Columbia.

Mr Jackson: Could you be more specific about the items? Could you itemize them for us?

Mrs Anderson: No, I am sorry, I could not. I do know that they instituted an arbitration mediation plan there not too long ago, and they have found it very successful.

Mr Jackson: For matters of classification?

Mrs Anderson: I do not know about that.

Mr Jackson: That is the area I want to get into.

Mrs Anderson: We have suggested a different classification idea, the idea of bonus-malus, where the classifications of age, sex and marital status have been completely removed; those are the ones that are the most contentious here in Ontario. The ones of territory and how many miles you drive and so on are pretty well cut and dried. But when it comes to age, sex and marital status, that was what the classification plan foundered on.

We still need a uniform plan and we have suggested the bonus-malus because it seems to work very well there. It works very well in Germany and Switzerland but British Columbia is our Canadian example, of course.

Mr Jackson: My other question has to do with the statement further down that you are concerned that more accidents will be deemed 50-50, thus earning a paid claim rating for each driver so both consumers end up losing in the end. Is that a gut feeling or is that experience based on examination in some jurisdiction?

Mrs Anderson: No, it is a gut feeling, I guess, but really it is from knowledge of the industry—

Mr Jackson: What industry are you talking about?

Mrs Anderson: The insurance industry. They use the fault chart to determine whether you are at

fault or whether you are not in many situations. It is not a question of determining all the little tiny incidents; you just look at a chart and say, "He was turning left," "He was running a red light," or whatever and therefore the companies determine very quickly who was at fault.

With subrogation over the injuries and the damage to cars, the companies are very careful to say, "Well, we weren't at fault," and try to determine exactly who was at fault; if the driver for the other insurance company was at fault. Now, with each company paying its own claims, will it be quite as religious in going to the letter and deciding who was absolutely at fault in any accident or will it be more simple to just say, "Well, let's settle it 50-50"? Both drivers are then at fault; both have a paid claim.

Mr J. B. Nixon: I would like to thank the consumers' association for coming before us today. I know you do good work and have done good work in the past commenting on financial institutions, proposals and legislation.

I have a couple of questions, though. Do you share the view that was agreed upon by Mr Kruger of the Ontario Automobile Insurance Board and has been presented to us by others that there is a premium inadequacy or a rate inadequacy in the insurance system now?

Mr Delaney: On the basis of the evidence presented by the industry to Kruger, there appears to be evidence to support that. But let me say on this question of no-fault that Mr Kruger was under enormous difficulty from the very outset by virtue of the terms of reference that were set by this government and specifically excluded pure no-fault from his terms of reference; so that in terms of any kind of objective analysis that could be made of the issue of no-fault as it could affect Ontario motorists, Kruger was thwarted by virtue of this exclusion.

Mr J. B. Nixon: But there is really not much to dispute in terms of the fact of premium or rate inadequacy.

Mr Delaney: I personally believe the evidence that was presented in that indeed there is a higher percentage of companies facing solvency problems today than most members around this table probably realize. Claims have been very high, and you see the evidence of this by virtue of the extent to which we have seen individuals who were totally innocent, good drivers who were assigned to the Facility Association. This has less to do with the ability of that person, indeed the driving profile of that person, as it has to do with the solvency difficulties that individual companies are facing right now.

1520

Mr J. B. Nixon: Final question: Many of the briefs we have received have not commented on the creation of the Ontario Insurance Commission by the government of Ontario and the extensive powers I believe that it will have to regulate, designate unfair practices, seek fines, seek penalties, obtain injunctions to order or force insurance companies to stop behaving in an unfair way vis-à-vis the consumer. Do you have any comments on the insurance commission?

Mrs Anderson: Yes. I would like to say that we approve of that absolutely. It is something we welcome. I do not know whether we have commented in our full brief—I believe we have mentioned it rather briefly—but certainly we are very pleased to see that initiative by the government.

Ontario has been one of the provinces with the least regulation of rates. For example, pretty well all the other provinces in Canada have a rate-setting board of some kind or another, and we have not. Even Alberta, which has pretty well the same companies that we do, has a rate-setting board. I do not know that it sets rates, but it is a rating board to which the companies have to apply. We have recommended in our brief that the file-and-use type of filing for a rate not be used; that there has to be an approval by the government rather than just a simple lack of nonapproval.

Ms Oddie Munro: I would also like to thank you for your interest in this and other issues. I notice you are advocating placing a consumer person on the commission, if not as an advisory. I welcome that.

There have been some concerns expressed that no-fault, or even threshold no-fault, would result somehow in an adverse action on the part of drivers to fulfil their responsibilities in some way, therefore resulting in an increased accident frequency. Do you see that as a concern?

Mrs Anderson: Not at all. As a matter of fact, I have noticed that it has been said that there is a study by Ms Devlin in Quebec that proved there were more accidents. But if you read the results of la Régie de l'assurance automobile in Quebec there are fewer accidents. There are more cars on the road and fewer accidents per year, so there are fewer accidents per car and fewer accidents per mile driven. We do not have those figures in our brief, but they could be supplied if you are interested.

Mr Delaney: Could I just add to that? This is the 1988 annual report of la Régie in Quebec. Let

me quote from page 5: "Between 1985 and the end of 1988 the ratio of fatalities and serious injury victims per 10,000 vehicles in use declined by 20 per cent."

Ms Oddie Munro: That is the essence of some of the fears that come before the committee; so I was wondering about the viewpoint of the consumers' association.

Mr Delaney: It is a red herring.

Mr Kormos: I do not know if you have had a chance to watch these hearings here since Monday, but there have been more than a few insurance company types showing up cap in hand. I have got to tell you their demeanour is like that of the person who has just been found guilty of the murder of both of his parents, who then begs for mercy because, after all, he is but an orphan.

They are coming and saying: "Look, I know we've sort of fouled up in the past, and I know we've treated our customers really poorly, and I know that even government ministers have talked about our shabby treatment of drivers in Ontario, and I know that we have been warned time and time again, but this time we really promise to do better. You've got to trust us this time."

When an insurance industry executive prefaces his comments by saying, "Listen, trust me," it makes me very worried.

Mr Jackson: Almost as bad as when a politician does it.

Mr J. B. Nixon: Touché.

Mr Kormos: I think most of the drivers in Ontario who have had the most unpleasant experiences with the insurance industry feel the same way. That is why I am interested when you talk about the track record of the insurance industry. I trust your impression is that the track record is not particularly good, but you join that with the track record of the government into the level of benefits.

Ms Anderson: Yes.

Mr Kormos: So I am interested in what you have in mind about this government's track record vis-à-vis protecting consumers' rights when it comes down to auto insurance.

Ms Anderson: We were referring to the indexing actually, because the first amount was set at \$70 in the 1970s, then it was set at \$140 and you know \$140 does not go very far these days; so had it been indexed, we probably would have been up to \$450 by now.

Mr Kormos: Darned close.

Ms Anderson: So we are not trusting this \$450 being put into legislation. If it is going to be written in, then the indexing should be written in as well, not just an ad hoc something that may or may not be given five years down the line.

Mr Delaney: Let me answer your question, because it is a very vexing one with me personally. I heard the minister fairly recently make some statements that in the absence of more workable solutions, or words to that effect, the government was introducing this legislation.

Let me say that when we are talking about industry executives and their attitudes, it may come as a surprise to some members of this committee that this bill introducing threshold no-fault may well have been a big disappointment to some executives. They were hoping for pure no-fault. Let me say I have had firsthand direct experience in chatting about this matter with chief executives of a number of different institutions who would have welcomed the Ontario government's introduction of a mandatory, government-run, no-fault automobile insurance system in this province.

Having this background in mind and having this information at hand, it was quite disappointing to me to see this in spite of all the evidence that was presented, which is in far more detail in previous submissions we have made, going way back well before Slater. We are not new guys on the block when it comes to being concerned about auto insurance. Our track record in this area goes back to 1976. We have been around a while.

Look at the evidence. Never mind the party politics or ideology; we are not concerned about that. What we are concerned about is the cost and availability of insurance in this province. Just look at the evidence of la Régie in Quebec. The average policy costs about \$120 less in that province than it does in Ontario, and the companies make lots of money in Quebec, believe me. The insurance industry does very nicely, thank you very much. It seems to me that they do it because in significant measure the government-run system for automobile insurance in Quebec is so efficient and effective that it reduces the overall cost and pushes up their bottom line.

I have difficulty when I see the issue being bandied about as a political issue when I feel it ought not to be.

Mr Kormos: I trust that your findings about the government-run system in Quebec agree with what the provincial government of the day back in the late 1970s discovered in the Woods

Gordon report, that government-run public systems are simply more efficient, that their overhead is significantly less.

Mr Delaney: Economies of scale. It is a natural monopoly, if the truth be known, with respect to the measuring of the various risks and so on. I am sure you have had, or maybe you should have had, some economists explain these principles to you, the principles of insurance: the larger the pool, the lower the unit cost. What we are having in Ontario is 150 companies fragmented, sharing about six million automobile policies, and as a consequence the efficiencies that go along with that.

1530

The Chair: You wanted to make a comment?

Mrs Anderson: I wanted to make a comment here, because I was present when the minister made his presentation on Monday. He mentioned there would be about 40,000 jobs lost. I think that is quite an exaggeration, actually, because first of all, the companies are not going to fold up and go away simply because auto insurance is taken away or bodily auto insurance is taken away. They would still have collision, comprehensive, liability and all the other forms of insurance; so their companies are not going to fail.

The brokers are possibly going to be reduced, but if the experience is anything like it was in British Columbia, the system there uses the existing brokerage system because it has to. How are you going to train people for every little hamlet and small town in Ontario when you already have a system that works, and those brokers will be able to sell everything else as well, so I do not think you are going to see many losses of jobs. I would like to put that one to rest right now.

The Chair: Just as a point of clarification, I think if you read Hansard and the minister's statement, he did not say 40,000 jobs would be lost; he said there would be possibly significant job dislocation in an industry that employs 40,000 individuals.

Mrs Anderson: I guess I read it too quickly. Thank you, Mr Chairman.

The Chair: Thank you very much for your presentation.

From the Ontario Psychological Association, Dr Wood, Dr Kaplan and Dr Snow. For the committee's information, it is exhibit 62, but the clerk also distributed a brief that the association will be reading.

I would just remind the committee at this time that we are scheduled to resume sitting on

Monday at 1:30. We will have our first witness at 1:30 on Monday.

Mr Kormos: I can start at 10.

The Chair: Dr Wood, we are in your care for the next half-hour. I would suggest, if possible, 15 minutes to go through your presentation and allow us 15 minutes for some dialogue.

ONTARIO PSYCHOLOGICAL ASSOCIATION

Dr Wood: Thank you for the opportunity to make our presentation. My name, as you know, is Dr Richard Wood, and I am president of the Ontario Psychological Association. With me are Dr Gary Snow and Dr Ron Kaplan. Dr Snow is the assistant director of psychology at the Sunnybrook Medical Centre, a consultant in neuropsychology and a member of the Ontario Psychological Association board of directors. Dr Kaplan is a senior psychologist at Chedoke McMaster Hospitals and an associate professor in the department of psychiatry at McMaster University.

As you are probably aware, the Ontario Psychological Association is a voluntary organization of some 1,400 members dedicated to the advancement of the profession of psychology in the province and to the betterment of the public psychology serves.

OPA is a participant in the informal mental health coalition with the Canadian Mental Health Association, the Advocacy Resource Centre for the Handicapped, the Ontario Psychiatric Association and the Ontario Head Injury Association. This coalition has been formed for the specific purpose of objecting to the exclusion of mental disabilities from the threshold. The Ontario Psychological Association believes that psychological or emotional trauma should be placed on the same footing as other serious injuries.

Drs Kaplan and Snow, as neuropsychologists, have a background and expertise in the evaluation and treatment of victims of automobile injury and have made an extensive study of Bill 68 on behalf of our association. I will be asking them to comment from this point on, and more specifically, I will call on Dr Snow.

Dr Snow: OPA is pleased to be given the opportunity to address the committee on the changes proposed in Bill 68. As our brief indicates, although we have concerns about the legislation, we also see some potentially positive features in the new system.

We are here today because we feel it is important that if the people in our province are to have confidence in any system of compensating

victims of automobile accidents, that system must be seen to be fair, just and nondiscriminatory. The system should further rehabilitation, not impede it. Finally, the system should exist for the benefit of the consumer and not for any other party.

We will not belabour the problems with the present system. We do approve of some of the changes proposed in Bill 68. The proposed changes have the potential for significantly enhancing the injured victim's chances of rehabilitation, thus they increase the amount of money which is available for rehabilitation and also establish a mechanism to ensure speedy payment for many health care activities. In addition, the increase in income replacement and the decrease in delay of waiting for such replacement are steps in the right direction.

The draft regulations have also recently been modified to permit coverage of services for the family members of injured victims who may themselves face difficulty in dealing and living with an injured accident victim. This change is most welcome.

However, there are still problems with the proposed changes which must be addressed before enacting the new legislation. Failure to address these problems will merely replace one inadequate system with another and may inadvertently create a system which will end up impeding recovery and rehabilitation for a different set of reasons.

We believe that if the legislation is to work there are changes that must be made. We also believe that some of the changes that have been proposed are discriminatory against women, against victims with psychological impairment and potentially against victims whose lives may be profoundly changed by accidents over which they may have had no control and for which, under the proposed changes, they will never be fairly compensated.

We feel it is fundamentally unfair for society to ask that injured victims bear the financial costs of income loss following an accident. We do not think it is proper to ask those segments of society that are already disadvantaged to suffer financially merely so that the rest of us can keep our premiums lower. We therefore recommend the following.

1. The threshold must not discriminate against individuals with psychological injuries. The simplest way to do this is to include the terms "psychological" and "mental" in the threshold. To do so would be consistent with the language used in the regulations. We would also abandon

the use of the term "continuing" to modify "injury," since we deem the phrase "continuing injury" to be meaningless. Finally, with the use of the terms "psychological" and "mental," the phrase "important bodily function" becomes meaningless and redundant. We believe that the modified threshold should be reworded to read in part, "physical, psychological or mental impairment caused by an accident."

2. The weekly benefits must be improved. We recommend that the weekly benefits be increased to a level which would offer complete income replacement for victims. There is simply no rationale for asking the innocent victim to suffer a loss of income in an accident. We recommend that the benefit for child care or care of dependent invalids be increased to a level which represents the true costs of providing that care. As our brief makes clear, the proposed changes will particularly be discriminatory towards women and we believe this discrimination is also unjustified.

We also recommend that a mechanism be established to cover loss of future income. Finally, we recommend that the government investigate ways of insuring that victims do not lose access to compensation because of their financial inability to retain counsel.

3. Coverage for all licensed health care practitioners must be assured. The legislation must ensure that psychologists and other health care practitioners are not inadvertently omitted from the regulations because of imprecise wording. Our concern about this matter originates in our past experience in similar situations where we have seen our patients denied access to our services simply because a given piece of legislation did not mention our profession by name. We feel it is appropriate that we be included in the regulations since the regulations state that psychological injury may be a cause for a person not returning to work.

4. The restrictions on weekly benefits coverage for impaired drivers should be removed. We do not think that the denial of weekly benefits will have any deterrent effect on the driving habits of the residents of this province. If the provisions are intended to punish impaired drivers, there could be more effective means of doing so. The current provisions would have the drawback of inadvertently punishing the spouses and the children of impaired drivers.

In addition, since even impaired drivers will still have to eat and clothe and shelter their families, if they are denied weekly benefits from their insurance and have no income replacement coverage at work, they will have to depend upon

welfare as a means of meeting their expenses. This mechanism would, therefore, transfer the financial burden of an accident from the insurer to the taxpayer. We would argue, therefore, that the current act could prove to be most effective if it concentrated on rehabilitation and left the punishment of such behaviour to other means and other legislation.

1540

5. Insurance companies must provide clear information to their clients at the time the policy is sold and at the time a claim is made. Because clients will be more responsible for arranging their own rehabilitation under the new system, it is imperative that the insurance companies be required to communicate clearly and factually with their clients. Because the changes proposed are so dramatic, we recommend that it be required that each policy must be written in plain language, specifying the options available to the client, the options the client has chosen and the options he has not.

We recommend that the automobile insurance company should be required to inform the victim in writing, at the earliest possible date after an accident, the amount that will be paid and the date that payments will begin. Since automobile insurance covers only what other policies do not, it is the automobile insurer which should be responsible for examining the victim's coverage to determine what it will pay for and what costs will be the responsibility of either other insurers or the victim's place of work.

In the event of an accident, the insurance company should also be required to inform the client, in plain language, of the system of mediation and arbitration available through the Ontario Automobile Insurance Board, the right to representation at any hearings, the circumstances under which the clients would have the right to sue and what types of information they must provide to their insurer.

6. Once the legislation is enacted, the government should undertake to educate both consumers and health care providers about how the act works. Since the spirit of the act is to encourage rehabilitation, it is important that health care practitioners understand what services will be covered under the act and how these services will be reimbursed. Similarly, it is also important that consumers understand how the new system works, what their benefits and rights are under the new system and how disputes will be resolved. The better informed the public is about the new system, the more likely it will be that

people will be able to use the system wisely and in the best interests of rehabilitation.

We therefore recommend that the government undertake a formal program of education for all health care workers likely to be affected by the legislation. Similarly, the government should inform consumers about how the new legislation would work.

In conclusion, while we support the concept of no-fault insurance and its potential benefits for the citizens of Ontario, we view the current bill as fundamentally flawed and urge you to consider the amendments we have discussed today. Again, thank you for providing us with the opportunity to present our views before this committee.

Mr Kormos: I am concerned about some of the issues this submission raises. Perhaps my comments should best be directed to the parliamentary assistant, Mr Ferraro.

I would like to know what the rationale is, especially in view of the fact that the government wants to adopt the label "no fault," for saying that a person is entitled to only 80 per cent. There is a cap. You cannot say it is for the purpose of having some control. There is a cap or a ceiling. Where does 80 per cent come from? Surely when a person is injured, struck down in a motor vehicle accident and in the hospital, the spouse and the children have the same daily household needs, do they not?

Mr Ferraro: I will answer it this way—though I am not sure it will be satisfactory to you—when we came up with 80 per cent, mindful of the fact that it is 80 per cent after taxes, it was directly related to costs. We have heard many, many submissions say that, indeed, it should be higher; it should be \$600-a-week income replacement. There is obviously a corresponding premium increase if we raise it higher. If money were not a problem, I assure you we would recommend higher than \$600.

To use an analogy that is pretty well known, as I understand it the Workers' Compensation Board has a limit—you can argue that it is too low and I would probably agree with you—of 90 per cent of net income. So \$450, exclusive of taxes and deductions, we think is a heck of a lot better than it was. Obviously, everybody would agree with that and I would agree with you that it is not high enough.

Mr Kormos: I am talking about the single mother who is making only \$6.50 an hour to begin with, supporting kids on that, paying rent and doing all those sorts of things and who is now injured and in a hospital. I suspect that most

injured people's expenses are going to increase, not decrease. So never mind the ceiling. What is the rationale for the 80 per cent, for only a portion of one's real wages, even if you come below that horribly low ceiling?

Mr Ferraro: Let me reiterate that in the lower-income categories, again, it is net of income tax and other deductions. Quite frankly, I think once you get to around the \$30,000 range the amount of income replacement is equivalent to the income they were getting before the accident.

I should remind you that we have also in those cases come out for the first time with a child care subsidy. In those cases where the mother is making \$6.50 an hour and has children, she should now be able to get up to \$50 a week per child to a maximum of \$200. Without giving you the full brunt of the government position on this, we have enhanced many of the other benefits to make life easier for that mother and indeed to get her back much quicker into the workforce and into the position she was in before the accident.

Mr Kormos: Perhaps point 4 in this brief does not cover the whole issue because it appears that the minister, when he was talking on Monday, said not only will drunk drivers not be eligible for no-fault but other persons convicted of Criminal Code driving offences will not. That is the way I read and heard the minister's statement, which appears to be an expansion on his original premise.

In view of the fact that some of the criticism of this threshold scheme was that it treated drunk, negligent and dangerous drivers the same as it treated innocent victims, it is understandable that from a purely political point of view the government might want to retreat and say: "We'll respond to that. We'll not let persons convicted of drunk driving collect income replacement." Then in the same breath the government says, "But we will let persons convicted of drunk driving enjoy these rehabilitation benefits because we don't want their families to suffer."

You have argued so much that it is the criminal or noncivil process that should respond to the drunk, careless and negligent driver. When you deny a drunk driver income replacement, at first blush it sounds like a good idea because nobody wants to pat drunk drivers on the back. But let's forget about the drunk driver and let's talk about three or four kids and a spouse—

Mr Jackson: Why do we not talk to the deputants who are with us?

Mr Kormos: Why do you not use your time and I will use mine?

Mr Jackson: I am waiting for you to take a drink so that I can ask a question.

Mr Kormos: What do you say to that, and what is the real rationale for denying those children and that spouse the income replacement that currently is available to them?

Mr Ferraro: This particular point of view, I suspect, could be debated ad nauseam, quite frankly. There are those who say that we should not even be giving drunk drivers income replacement to the point of conviction. I understand that. The government's position, quite clearly, although unsatisfactory to the point of view you are presenting, is that we feel that by forcing drunk drivers to take a special course to deal with that problem, in the event that they want their licences back, and by making fault in the ratings—if you are a drunk driver who is caught and convicted, you are going to pay a lot more for your premium—we are trying to deal with that serious social problem.

I object when you say it is a political issue, because it is not. It is a matter for everybody to deal with drunk driving and to get those people off the road.

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The bottom line, and I will conclude with this, is that our position is, quite simply, we do not think it merits giving income replacement to a drunk driver who is convicted. We think that person should be dealt with and bear full responsibility for his or her actions. On the other hand, we want to try to help that individual to get back to being a full and active participant in society.

Mr J. B. Nixon: I would like to ask a question about your second point, that weekly benefits must be improved. The argument put to us by many is that the existing level of \$450 a week, which is net, will give full compensation to a majority of Ontarians. As you increase the level of wage-loss compensation that would be paid, so must the premiums increase, and it becomes a situation where low-income drivers are subsidizing the high-income accident victim's wage loss.

An alternative way to deal with it is to ensure that within the marketplace there is available additional wage-loss compensation insurance, to be purchased as an option to your automobile insurance policy. What do you think of that?

Dr Snow: I do not know if anybody else has anything to add. I am going partly on the summary that was provided of the Ontario Automobile Insurance Board hearings. As I read that, it indicates that it is not just the high-income

driver who is discriminated against by this. There is a passage in here which specifically says that low-income drivers will also suffer. It is the ones in the middle who are best covered.

There is also information in here that a threshold system such as the one proposed will have a particular impact on certain groups of people, and the single mother is one particular example. The economic analysis that was commissioned by the OAIB said that approximately 50 per cent of single parents will require welfare with the provisions that are included in here. I am not an economist; I can simply go on that economic analysis.

So I think it is a mistake to think that it is only the high-income earner who is going to suffer. If we put 50 per cent of single-parent families on welfare, if we know that 90 per cent of single-parent families are women, we are discriminating.

Mr J. B. Nixon: I do not understand that. I do not think I can agree with you, because if you have full wage-loss compensation up to \$450 or 80 per cent of gross income, which is really talking upwards of \$550 or \$600 gross income, I do not see how that discriminates against low-income earners. I can see it discriminating against high-income earners; but the low-income earner is getting full compensation in any event.

Perhaps you can help me with my second question. We have heard a lot of discussion about modifying the threshold to include, as you suggest, psychological or mental impairment caused by an accident. Could you give me some examples of cases where there would be permanent, serious psychological or mental disability or impairment without any physical trauma?

Dr Kaplan: Let's begin with head injuries. When you say "without physical trauma," the issue is not physical trauma but physical injury.

Mr J. B. Nixon: Pardon me?

Dr Kaplan: The issue is physical injury in the threshold.

Mr J. B. Nixon: Sorry, go ahead.

Dr Kaplan: The threshold uses words like "physical," "bodily," "continuous injury"—

Mr J. B. Nixon: As a pseudo-doctor, I am not very good at it.

Dr Kaplan: All three of us see many head-injured individuals. The vast majority of permanent, moderate head injuries and many severe head injuries have no detectable brain lesions. They have struck their head or they have had what we call a whiplash-type head injury,

where violent forces throw the brain back and forth in the skull cavity.

There is no technology for determining what the physical damage is. What we are able to do is detect that the brain is not working normally in terms of memory, concentration, attention, and personality changes. These changes are very often permanent and they are very serious because they affect a person's ability to work and function within his family. Yet in the vast majority of these cases they no longer have abnormal neurological signs after a few years—the computerized axial tomography scans are normal, the electroencephalograms are normal, but they have definitely changed in terms of their cognitive function and their personality. This is a very large number of people actually.

Mr J. B. Nixon: I understand. I am very aware of the head-injured situation.

It is my understanding, and I think I would like to get clarification during the course of the hearings, that once there had been a physical injury which induced a change in behaviour which was permanent, the fact that it was no longer demonstrable through an EEG or something became irrelevant because you had established a physical cause. You have established a permanent change which is observable and identifiable and diagnosable, so you are over the threshold. I may be wrong. I just wanted to flush that out with you.

Dr Kaplan: There is the term “continuing injury,” which we think is a meaningless term, but we think it was included there just to make those kinds of cases difficult to deal with.

Mr J. B. Nixon: Maybe we will flush that out.

Dr Kaplan: You have to prove that there is a continuing, detectable, objective, physical lesion of some kind, which you just cannot do with current technology. So there are phrases in that threshold which could make it very hard for the kind of case we are talking about.

Mr J. B. Nixon: On the other hand, very quickly, there is a doctrine of law, the Latin being *res ipsa loquitur* and the English being “The thing speaks for itself.” If you can say there was a physical injury—that is established—and a continuing psychological or mental problem, it speaks for itself that the injury caused the continuing disability; therefore, it is over the threshold.

Dr Kaplan: Currently, the way we operate is that the task of the plaintiff is to prove that his disability is caused by the accident. We do not always know the exact mechanism. What this

threshold is trying to do is say that it is the way the injury is caused, the way the disability is caused, that is important, not the fact that the accident caused the disability.

Gary, would you like to speak to the issue of the psychological trauma?

Dr Snow: What I would simply say as perhaps as another way of responding to you is that there is a gradation of physical blows. With many of the people we will see, there is a question as to whether they in fact ever did strike their head. They may say: “I was dazed. I was concussed. I was shaken up.” There may be a change in their behaviour after that which may be, to all intents and purposes, permanent on a psychological basis.

I will give you a good example. There are people who are still suffering the effects of the Mount Saint Helens eruption out in Washington. There was no physical trauma to those people, but like the people in the earthquake in San Francisco or the people in the hurricane in South Carolina, an event happened that was of such magnitude that they were overwhelmed. It was not that they were bad people, that they were weak people or that there was something wrong with them; they have ongoing problems which link back to that trauma without a physical blow that occurred to them.

Second, the literature is starting to suggest now that you can get people developing psychotic disorders, which are very serious types of disorders, without necessarily having a definite blow upon which to base it.

Going back to a point Dr Kaplan was making, I think one of the problems we will go around and around in the court system with, and with the hearings, will be that the arbitration will be, “Well, this person's behaviour has changed, but was that blow sufficient enough to get us over to the physical side?”

Are we going to be debating whether it is physical or not? If we simply replace it with psychological/mental, we do not have to worry about what the cause is, we worry about the effects.

Dr Wood: There is also the important consideration that in an instance in which a significant physical injury has been sustained which sets the stage for ongoing significant physical pain and disability, which creates considerable psychological distress, one can see that the psychological distress in and of itself, over time, in turn sets the stage for other ongoing psychological disability that has considerable impact upon a given individual and upon his

family as well: disability and problems that are not directly and demonstrably related to the chronic pain that the initial physical injury created, but that are in and of themselves a consequence of the psychological forces set in motion as someone has to contend with significant physical pain and disability.

Mr J. B. Nixon: If I may, very quickly, in the tort system now, you still have to prove the causation. I would imagine that in some cases that is a tricky thing to do.

Dr Kaplan: But any causation that is related to the accident is sufficient. You only have to—

Mr J. B. Nixon: Sorry, if I can just—

Dr Kaplan: Yes.

Mr J. B. Nixon: Having established that, if I can go back, the previous example, I understood, was one where there was a physical injury established, and I would put it to you, because of the continuing mental disability, that takes you over the threshold. So the debate that we are having about causality is a debate that would occur in any event and the threshold does not bar us from having that debate in a courtroom because you have established the physical injury.

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Dr Wood: Except that the initial physical injury may not pass the threshold for physical injury established, but it may set in motion psychological difficulties that become profound over time and that continue to have an impact long after the physical injury has resolved itself, leaving the claimant really without benefit of any recourse.

The Chair: Mr Jackson, a couple of minutes.

Mr Jackson: Yes. The reason I yielded was because my line of question was being covered. So I will just ask, are there any specific amendments which you could recommend? You have given guidance to this committee, but your brief—an excellent brief incidentally—does not specifically refer to a section and specific wording. You have suggested that something may be too vague and may not be as clear. Is there an opportunity for your organization with legal counsel to look to resubmit at some later date, not in person, some specific wording amendments to the bill.

Dr Wood: We would certainly be very pleased to do so, Mr Jackson.

Mr Jackson: That would be very helpful to us. I want to take very seriously your arguments and would like to consider those amendments, but it is always better if we had those in

amendment form, in legal language. Our option is to ask the legal counsel to the committee to go and draft them in that language, but then we have to come back and check with you. If we could get your version and we will check with legal counsel, then we would have the basis for some potential amendments to this legislation. Thank you very much for your brief.

The Chair: I have quickly looked through brief that you sent around to us, exhibit 72. You propose the wording, but not exact legal wording which we may need to consider as a committee. So if you could get that together and get it to the clerk of the committee, we would certainly make use of it. Thank you very much.

Dr Wood: Thank you again for the opportunity.

The Chair: From the Co-operators insurance company, Bill Weafer and John Black. I see there are a couple of other gentlemen coming to the table, so if Mr Weafer would introduce the others.

Mr Ferraro: Welcome my constituents.

The Chair: Welcome, Mr Ferraro's constituents. We have done that. I say hello to Mr Weafer and Mr Black again. I was associated with them with the Ontario Federation of Agriculture, so it is nice to see you again. For the next half-hour we are at your disposal. If you could try to keep your presentation to about 15 minutes and allow 15 minutes for some questions and dialogue, we would really appreciate that.

CO-OPERATORS GROUP LTD

Mr Weafer: I would like to introduce my colleagues on my left, John Black and Warren Hanstead, who are two directors of the Co-operators. We think that in part your weighing what we have to say should be determined by who we are. John and Warren are going to both speak to that. On my right is Jim Orr, who has recently been appointed to rehabilitation manager with the Co-operators and has a key responsibility on implementation of this new program.

Mr Black: Thank you for the opportunity. I would just like to lead off on behalf of the Co-operators and lead right into an overview of our brief in which we say that the Co-operators Group Ltd, generally known as the Co-operators, is a leading, diversified group of Canadian companies aimed primarily at insurance and financial services, computer services and information processing, investment counselling, property management and development and communication services.

We are founded on co-operative principles and values which promote democratic involvement of stakeholders, who are the owners, customers and staff. We are owned by co-operatives and similar organizations representing more than four million Canadians.

For more than 40 years, the Co-operators has been serving Canadians and we are proud of our rural roots. They have given us the strength to grow as leaders and the foundation to meet the needs of Canadians, both rural and urban. The Co-operators' mission is to develop organizations which contribute to the social and economic development of our members, customers, staff and the wider Canadian community.

We are committed to sound management and the provision of products and services recognized for their quality, excellence, relevance, value and fair prices.

I think I would just like, for a minute or so, to digress from the text and talk about the overview, who we are and where we come from. We did hear the phrase used within the committee this afternoon, "insurance types." I would just like to talk about who, for example, I am and where I come from to the board of the Co-operators.

I am a beef farmer in the province of Ontario, in the Georgian Bay area. I serve as the clerk and treasurer of the local municipality in which I live. I have been actively involved as a direct member of the Ontario Federation of Agriculture for 35 years and was active within that organization at the local level during the 1950s and 1960s. I was a member of the board of United Co-operatives of Ontario for its full 12-year period and it is from that base that I come to the board of the Co-operators.

The board of the Co-operators is made up of 20 people similar to myself who come from all across Canada, who are responsible for developing and seeing that the policy and the philosophy that the co-operative movement is founded on is carried out. So when we talk about the democratic involvement of stakeholders, we are talking about the control of an organization in which we are committed to the provision of service rather than to the development of profit for our member owners.

When we refer in this text to member owners, we are talking about 35 co-operatives and other organizations across Canada. The bylaws of our company do not allow the earnings and reserves of that Co-operators' group to accrue to the balance sheet of those member owners and so I think we can, with justification, say that we are in

this game to provide fair service at a competitive price.

If I could go on then with the historical highlights as to the formation of Co-operators, we have for more than 40 years been serving Canadians and have been committed to service excellence. Our mission has been and continues to be to develop organizations that contribute to the development of members, customers and staff as well as the wider Canadian community. We believe this commitment demonstrates the relevance of co-operation and provides our customers with the quality products and services they want at competitive prices.

The Co-operators is a national organization. Our predecessors, Co-operative Insurance Services, from the west and from the Maritimes, and Co-operators Insurance Associations of Guelph, commonly known as CIAG, from Ontario, joined in 1975 to form a holding company. This was incorporated under the Canada Corporations Act in 1975 and registered under the Canada Cooperative Associations Act in 1978, at which time our name officially became the Co-operators Group Ltd.

Our history goes much further back. In the mid-1940s, farmers throughout Canada were dissatisfied with the insurance services and products that were available. In Ontario specifically, there was great dissatisfaction with the available fidelity bonding and livestock transit insurance services. Thus, in 1946, the Co-operative Union of Ontario and the Ontario Credit Union League formed Co-operators Fidelity and Guarantee Association, known as CF&GA.

The following year, the Ontario Federation of Agriculture, OFA, became the third sponsor. A general insurance agency was established to gain experience in handling other lines of insurance and plans to write automobile insurance began to take shape. During these same years, United Co-operatives of Ontario also joined as a sponsor. By 1960, the business was the second largest company writing auto insurance in Ontario. At this time, a companion life company was also incorporated in Ontario, and together these two companies were known as the Co-operators Insurance Associations of Guelph. CIAG, as mentioned, joined with the east and the west to form the Co-operators.

Today we are a co-operative business owned by major agricultural and consumer co-operatives. Our businesses include companies providing insurance, financial services, computer and information services, investment counsel-

ling, property development and management and communications. We are proud of our rural roots and equally proud of our growth and development which parallels the growth and development of this province.

Just a word on our core values, which we have taken a lot of time to develop and which we are committed to:

We believe that people have the right and responsibility to influence the direction of their organization and share in its results according to co-operative principles and values.

The Co-operators has a fundamental respect for people as individuals and collectively.

The Co-operators is committed to delivery of excellent products and services.

The Co-operators values growth, expansion and dynamism.

The Co-operators acknowledges what is right and what is true to standards for our activities.

The Co-operators pursues open and honest communication.

The Co-operators believes in an organizational culture which promotes the spirit of teamwork and team approaches to management.

The Co-operators is a socially responsible co-operative organization.

The Co-operators is an integral part of the co-operative sector and is an active presence in the business sector.

There I will turn it over to my colleague, who will go on to operations.

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Mr Hanstead: Just a bit of my background: I am Warren Hanstead, I am from Ottawa, I am a general manager of the National Defence Credit Union and I have been managing credit unions for 25 years. On the other side of the ledger, I am presently the chairman of the board of the Credit Union Central of Ontario. I have previously served on the national association of the Canadian Co-operative Credit Society, and also spent some time with Helen Anderson, who was here a while ago, as director of the Ontario Share and Deposit Insurance Corp. I am vice-chairman of the board of the Co-operators and I have been on the board for some 12 years.

As to the operations of the Co-operators, financial services at the Co-operators are provided through our two major organizations, Co-operators General Insurance Co and Co-operators Life Insurance Co. Co-operators General Insurance Co is the largest Canadian-owned multiline insurer, providing coverage for more than a million autos and half a million homes.

Co-operators Life Insurance Co is among the top 20 in Canada, insuring several million lives.

Together the companies have more than 300 service offices across Canada and employ more than 5,000 people. Both our insurance operations are recognized for their innovative products, personalized service and commitment to meeting customer needs.

The Co-operators also has a number of subsidiary insurance companies, including Security Life, which specializes in registered retirement income funds and annuities; Federated Agencies, specializing in annuity quotation and placement services; Sovereign General, marketing through independent brokers and agents with its main focus being commercial insurance; H. B. Group Insurance Management Ltd, and Cosco Insurance Co, which markets auto and home insurance through payroll deduction.

There are several other companies in the Co-operators Group as well.

Co-operators Data Services Ltd supplies data processing, network management, consulting services, office products and facilities management to organizations in the financial and health care sectors. With a long list of firsts in introducing technological innovation to Canada, CDSL is Canada's third-largest computer service bureau.

Co-operators Investment Counselling Ltd provides investment management services and financial advice to corporate clients across Canada.

Co-operators Development Corp Ltd creates property investment through selective purchase and development and manages these properties to maximize the return on investment. The company provides the full spectrum of industry experience: instruction, development, property management, portfolio management, design, leasehold acquisition, systems and administration.

Co-operators Communications Ltd is a full-service corporate communication firm specializing in video programs for business, industry, government and other organizations.

Together with all these companies we form the Co-operators Group.

Mr Weafer: Mr Chairman, I would just apologize in advance. I was not clear on the 15-minute guideline, so I will skate a little fast.

The Chair: It is a half-hour for the sum total. The best way to handle it, so that it allows some time for questions and discussions from each of the three parties—

Mr Weafer: I will try to skate pretty quickly now to cover points specific to Bill 68 in the material we gave you. We want to really stress three points.

First of all, some change is necessary and urgent. The public wants costs reduced or at least contained. After three years of study it is clear that these objectives cannot be achieved in the existing system. The present rates are inadequate and insurers require that costs be reduced or rates permitted to increase.

Second, a system that emphasizes speedy payment of essential benefits, rather than adversarial procedure, in the majority of cases will benefit consumers and reduce dissatisfaction with auto insurance.

Third, the Co-operators has a track record of quality service to policyholders and is confident we can deliver even better service under the proposed system.

The Co-operators believes it is important to consider this legislation in the context of the Ontario motorist protection plan. The announcement last September clearly recognized the problems regarding auto insurance in Ontario. Both affordability and availability go beyond attempts to control how insurers set rates. Rates reflect costs, and costs are largely determined by the number of accidents and the losses arising from these accidents.

This is not only an issue of insurance cost. Such issues as highway design, traffic law enforcement, driver training and regulation and a number of other factors must also be addressed. We are encouraged that the announcement last fall recognized that this is a multifaceted issue and that action is promised or under way on several issues, including the establishment of an insurance commissioner with substantial powers.

We believe the issue has two dimensions to it, a human one and a financial or business one. On the human issue, the question really is what happens to and for people when they are involved in an automobile accident. Since the early 1970s, the Co-operators has advocated no-fault insurance in Ontario. We have done so because we believe it is in the best interest of our policyholders in terms of equity, service, efficiency and effectiveness.

In terms of equity, fairness in terms of who gets what share of the dollars spent on auto insurance claims is a serious problem under the existing system. Under the existing system, large payments often go to those who have the financial resources to resort to the court system

and who can accept long delays when recovering losses. The present emphasis on determining blame means long delay and often little or no recovery for far too many people.

The proposed system will make benefits quickly and automatically available to almost all insureds. The legal system will continue to deal with the most severe cases. Recovery of losses will not rest on a person's financial ability to hire a lawyer, his willingness to spend a substantial portion of his claim settlement on legal fees or his ability and willingness to live with long delays.

In service, the present emphasis on determining fault interferes with our ability to provide satisfactory service to our policyholders. No-fault emphasizes the paying of benefits instead of arguing over blame. Co-operators believes this will enable us to do a better job of providing claim service. The emphasis on claimants dealing with their own insurance companies will put pressure on all insurers to provide better service.

In terms of efficiency, the losses of the minority of people who are involved in an accident at any given time period are paid for by the premiums of all drivers. Efficiency in this system means the degree to which premiums are available to reimburse people for their losses rather than getting used up for other purposes. Under the present system a substantial portion of claims dollars covers direct and indirect costs of determination of fault. Under no-fault these dollars will be available to pay more benefits for reduced premiums. A no-fault system will be more efficient because it directs a greater portion of claims dollars to the people with the losses rather than to legal and administrative costs.

In terms of effectiveness, the Co-operators is proud of the claim service we provide. It has been a key to our success in the province. But we know that the present system does not do a good job of meeting the needs of people with losses arising from an auto accident. Under the proposed system our claims people can focus their efforts on payment of benefits and assisting with rehabilitation for a speedy recovery instead of arguing over fault. In this environment we know that we will do a better job of helping people recover from an accident.

Included with the material we submitted is a package of the information we have provided to our staff to give evidence, I think, of our commitment to the program and of the message we are trying to get across to staff of what this means for how we do business.

There is another dimension to this and that is the business or financial issue. As an insurer we naturally have views and concerns about the system we operate under. We appreciate the opportunity to outline these views to your committee.

We also recognize that for the large majority of Ontario motorists these are pretty abstract issues. Most people seem unaware, uninterested or confused about the so-called debate. To many it appears to be a confusing argument involving principles, and perhaps principals too, that are mainly of interest to insurers and lawyers, both parties with substantial self-interest at stake.

We believe most Ontario drivers think about auto insurance in terms of affordability and availability and both have been issues of public concern over the past three years.

Providing auto insurance in Ontario has become a losing proposition. In the 21 months ending 30 September 1989, the Co-operators had a net loss after investment income and after substantial recovery of one-time capital gains of over \$70 million. To put that in perspective, that represents a quarter of the total surplus we built up over 40 years in business. We are committed to remaining in the business, but the price of hanging in while the government makes up its mind which direction to move is heavy.

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What this means is that the present premium levels for auto insurance are seriously inadequate. The rapid growth of Facility, intended as an industry pool for high-risk drivers, and the withdrawal from part or all of the province by a growing number of insurers reflects this problem, this inadequacy.

From a human perspective, we believe that Bill 68 is an important improvement in terms of our policy holders. From a business perspective, we believe it represents necessary action to resolve the serious problem of rate inadequacy, providing a solution to the public concerns about affordability and availability.

In closing, we want to emphasize that Bill 68 is just part of the Ontario motorist protection plan and that the elements of driver education and control, highway design and traffic law enforcement are critical elements that must be addressed. They can not only reduce insurance costs, but also reduce the loss of life and human suffering caused by auto accidents. We hope other parts of the program will get the same attention as is being given currently to the insurance aspect.

Bill 68 proposals have been developed by a lengthy and thorough process, including investigation of costs of the proposed system by the OAIB and the examination of the insurance system by Slater, Osborne and the OAIB. As with any change, it is possible to show that some people will get less. It is also clear that many will get more and that most will get necessary benefits sooner.

We see Bill 68 as a reasonable balance between pure no-fault and the existing system. It is an important step towards providing greater equity, efficiency and effectiveness in auto insurance and improving service to claimants. It will help address the public concerns around availability and affordability. The need for reform has been studied and debated at length in a number of different forums for the past several years. We believe it is now time for action.

The Chair: Thank you, Mr Weafer. Mr Nixon, Mr Furlong, Mr Sola—all divided within five minutes.

Mr J. B. Nixon: I want to go over some ground with you, Mr Weafer. It is my understanding that the Co-operators writes approximately 10 per cent of the auto insurance policies written in this province.

Mr Weafer: Correct.

Mr J. B. Nixon: You said your all-in losses last year were approximately \$70 million.

Mr Weafer: No, that was for the 21-month period ending 30 September last year, so it is 1988 and up to the end of September 1989.

Mr J. B. Nixon: Seventy million dollars: some would ask why Co-operators is continuing to write auto insurance in Ontario.

Mr Weafer: One of the reasons we came into being as an organization was to provide insurance to people. That is the purpose of our existence. We believe in the business from a long-term perspective. It is our future. Approximately 70 per cent of our revenue in Ontario comes from this line of business, so our future as an organization hinges on being in that business. We are optimistic that with movement on these sorts of changes, it will once again become a positive business to be in.

Mr J. B. Nixon: So it is fair to say that you could not just withdraw from this market and retreat to some foreign jurisdiction or anything like that.

Mr Weafer: We are Canadian owned. Our business is in Canada. No, we do not have anywhere else to slip off to.

Mr Furlong: I would like to get a comment or two about the insurance commission and how you view it. I do not see anything in your brief dealing with that. The commission has some very broad powers under the act. It is going to mean that the insurance industry is going to pay attention or be subject to some serious penalty. I wonder how you feel that is going to impact on the industry itself.

Mr Weafer: We believe it is a necessary part of this change. It is going to be a significant change for all insurers. It is going to require them to change the way they do business and I think they are going to need strong encouragement and a public overview to ensure that does happen. We think that for this system to work you are basically dealing with a product that is made compulsory by the government. People have to have it. I think that means the government has a clear stake in seeing that it is being well and fairly delivered. We think that the role of the commissioner makes good sense.

Mr Sola: I just have one question. This committee has been told time and again that even under the present system there is difficulty quite often in people collecting the no-fault portion of payments that is due to them. You state in your brief that the recovery of losses will no longer depend on lawyers. Can you give us some example or explain how it will be easier for people to collect on no-fault under Bill 68 than they have been able to do under the present system.

Mr Weafer: I would like to invite my colleague Jim Orr to respond to that. Jim is a long-time senior claims person with us. We recently took him out of the claims area and put him full-time focusing on just that issue.

Mr Orr: We believe we can deliver the no-fault benefits in much the same fashion we have in the past. We have an extremely good reputation in that area. We have strict service standards for our claims people to follow in the delivery of the first-party benefits and we are very confident that with the training and guidance we will give them, we will be able to carry through with that same performance under the new legislation.

Mr Weafer: As this topic has moved along and the comments were made about companies' ability to deliver, we have been concerned about that. We take pride. We monitor our claimants for their views and how they feel they got service and so on.

We took another step recently. We have set up what we call a policyholder review committee where we have some people who are policyholders in the company. Anyone who is dissatisfied with the treatment he got or the service he got can go there and get a hearing that is binding on us and not binding on him.

We think this is important. It is a change and it needs some monitoring, as any change does.

Mr Kormos: I am interested in what the Co-operators has to say about the position taken by the Consumers' Association of Canada. They articulated it a couple of months ago and repeated it again today, and that is to say their observations of public nonprofit systems revealed those systems—they used Quebec as an example—to be more efficient and that among other things, with the economies of scale and with the structure as it is, they are more efficient now.

Those conclusions by the CAC are in line with what was determined by the Ontario government's own study in the late 1970s about the western systems, the public nonprofit driver-owned systems there, which similarly—I am talking about the Woods Gordon report—showed them to be more efficient. Have you made any studies of your own or can you comment on the observations of the CAC?

Mr Weafer: I would be glad to. There are really two dimensions. There is a political dimension which I would rather not speak to, and there is a business one.

In 1987, the most recent figures I have, the Insurance Corp of British Columbia, the government-run plan in British Columbia, operated at an expense ratio of 19.7 per cent when you allow for premium tax, which they paid only part of that year. Our current expense ratio is 22.6 per cent. In other words, we are running slightly more than three per cent above the government monopoly. We think that is evidence that a nongovernment plan can get close to similar efficiency levels, and we believe that under Bill 68 we could improve from where we are now. So we think it is possible to achieve comparable efficiencies without a monopoly.

Mr Kormos: Part of this legislation is going to result in the elimination, as you have suggested, of the tax on premiums. That is going to create a shortfall to the government of \$95 million in the first year alone, and a savings to the insurance companies in the same amount. That same \$95 million is going to have to be raised somewhere else, because we all know that the government is not going to cut its spending by \$95 million.

What is happening there is that the taxpayer appears very much to be subsidizing the private insurance industry in Ontario, and that is along with, of course, the gift by way of OHIP to the insurance industry. Some persons would indicate that that is going to be as much as \$140 million in the first year alone of direct subsidization of the private insurance industry by taxpayers in Ontario. What do you have to say about that?

Mr Weafer: I guess the key point is that the same people who pay the premiums to us are the people who pay the taxes, so it is a question of where you want to balance the teeter-totter. You can enrich the benefits under this program if people want to pay more; you can increase the taxes that the government levies on us if people want to pay more. We tend to have a personal view in terms of how much we like to be taxed. We think the issue before this committee really is affordability and availability, and part of that is how you are going to balance the teeter-totter and the cost that you put on us, because those go on to our policyholders.

1630

Mr Kormos: You talk about availability. How responsible has the insurance industry been in the last year in terms of availability? All I have heard, seen and read about is more and more people being refused insurance and being forced into Facility. What gives there?

Mr Weafer: Let me speak again to the position of the Co-operators position. We have been in the business here for 40 years. We expect to continue in it. As I mentioned when you were out, we have incurred \$70 million in losses, bottom-line after investment income losses, in the 21 months to the end of 30 September of last year. That represents a quarter of the total surplus we built up over 40 years. We have stayed in the business. We have stuck by our policyholders because we believe that is our job and because we believe in the future of the business. So I can speak to our position in terms of availability.

The Chair: Thank you, gentlemen, for your presentation. We appreciate it very much.

Lawrence Palk: The clerk has distributed your submission. You have 15 minutes. You could probably take anywhere from five to seven and then we could get into some questions, discussion and dialogue.

LAWRENCE PALK

Mr Palk: I hope to keep you all awake; I hope to keep myself awake. My name is Lawrence Palk. Before beginning my statement I would

like to thank you all for allowing me to speak on Bill 68 today. I greatly appreciate the chance to speak.

In the past months I have been following with interest the heated debate on Bill 68, with all parties outlining their positions. Today I present a different perspective in the hope that the government of this province will realize the necessity of amending this flawed and less-than-balanced bill.

I speak before you today as an innocent victim of the carnage on the roads of Ontario. On 13 May 1988, I was the victim of a hit and run car-bicycle accident in Brantford, Ontario. I am lucky to be alive. In the course of this incident I suffered a broken neck, a fractured skull, a concussion, cuts and abrasions, pneumonia, mood swings and loss of memory for nearly five weeks. My family and friends would visit me in the hospital and I would never know they were there.

It is sufficient to say that this accident has changed my life. In the course of the last 20 months my family, friends and health care givers have been my greatest strength and I thank them for their support. It is therefore in the context of my position as an accident victim that I view Bill 68 today.

When I think of Bill 68, several points come to mind: lower insurance premiums, private versus public insurance, political considerations and victims' rights. The debate over private versus public insurance and their supposed costs may never be settled between the New Democratic Party and the other two political parties of this province.

Stemming from this argument are the legitimate concerns of insurance companies as to whether or not they survive or perish in financial terms. The political consideration for the government is the passage of Bill 68, a bill it sincerely believes is fair and balanced. Concerns for the rights of the victim are human concerns and basic to our way of life.

In the context of these basic human concerns, I would ask the Liberal members of this committee to focus for a moment on their principles as Liberals. In the decade of the 1970s former Liberal Prime Minister Pierre Elliott Trudeau coined the phrase "the just society." In the context of that society Mr Trudeau viewed equality and evenhandedness as important for all citizens.

I further ask government members to reflect on the meaning of "liberal" as contained in most dictionaries today. It says, and I quote, "Fav-

ourable to or in accord with the policy of leaving the individual as unrestricted as possible in the opportunities for self-expression or self-fulfilment." When viewing victims' rights and Bill 68 in this context, I believe the Liberals have some self-examination to indulge in. There are elements of this legislation that must be excluded in order that Liberals remain true to their principles.

The following parts of the proposed bill must be condemned and eliminated.

1. The proposed model of high-threshold no-fault without the right to sue is wrong.

2. The income replacement benefit under the Ontario motorist protection plan without the right to sue is insufficient and discriminatory. In Ontario the benefit would be frightful to live on. In Toronto and most major centres it would be impossible to live on.

3. Under the new plan a reckless user of a vehicle who causes injury to himself or herself in the process of injuring others is able under this bill to extract similar and conceivably greater income replacement benefits than the persons he or she injures. This is not merely unacceptable, it is inhuman.

4. Without the right to sue, the supplementary medical care and rehabilitation benefits for long-term care are clearly inadequate.

5. The lack of recognition in Bill 68 of the human toll caused by psychological and emotional injury resulting from an accident.

6. Without the right to sue for pain and suffering except for the worst of cases where someone is killed or maimed for life, the victim's pain and suffering becomes a nonissue in financial terms.

7. The hiring of slightly over 100 new police officers to, in theory, police the highways of Ontario ignores the real problem of insufficient penalties for poor drivers under provincial and federal laws.

8. The notion that short-term, token alcohol rehabilitation programs will somehow cure impaired drivers of their tendency to drive while intoxicated and allow them the right to return to the road is, at best, questionable.

These elements reflected in the Ontario motorist protection plan must be reviewed seriously and changed by the Peterson government if Liberals are to remain true to their principles. In this regard, I would recommend the following changes to Bill 68:

1. That the right to sue in court and obtain rightful compensation for pain and suffering, psychological and emotional injury and other

physical injury and death be maintained, as is presently the case and was recommended by the Osborne report;

2. That the government of Ontario, in association with all other provinces, seek to put the greatest political pressure on the federal government to mend, without delay, sections of the Criminal Code dealing with auto-related offences in order to effect considerably more severe punishment for these crimes;

3. That the present government amend all relevant sections of provincial statute, including the Highway Traffic Act, to reflect greatly increased penalties for auto-related offences;

4. That repeat impaired offenders receive far more severe punishment under the laws of Ontario and Canada than is presently the case. One example of such a change would be a lifetime ban from driving by revoking licences without the right to be insured;

5. The penalty for driving without licences which have been suspended would be met with greater force under the law;

6. All first-time impaired driving offenders would be subject to mandatory alcohol and behaviour rehabilitation therapy and as part of such therapy, such offenders must visit hospitals as a means of showing them what the injured victims of impaired drivers go through on a daily basis.

In conclusion, my recommendations are meant to suggest that stronger penalties and meaningful rehabilitation will do far more to lower auto insurance rates and take the poor drivers off the road than eliminating the right to sue and punishing the victims of crime financially and psychologically in the process.

Finally, I wish to conclude by saying that when I look at this bill, I believe it is safe to say that the legislation and the debate on it has become tainted. A perfect example of this was illustrated in a heartless manner by James Daw, columnist in the *Toronto Star* of 16 December 1989, when he wrote: "Several eloquent and determined lawyers are working hard to make us feel guilty for trying to save money at the expense of grieving mothers and other innocent victims. But should we?"

1640

Is this the level to which this debate has sunk? Are those people in opposition to this bill, the victims, the lawyers and others, all wrong? Have we become so cold-hearted and stone-faced about this bill that we cannot act humanely in the face of human tragedy? If you, the members of the Legislative Assembly of Queen's Park, can

stand in your places and vote for a piece of legislation that the minister responsible for this bill, the Honourable Murray Elston, calls fair and balanced, I feel sorry for you.

The bill, as it now stands, is an abrogation of Liberal tradition and a scandalization of human values that most of us learned long ago. I hope and I trust that this committee and this government will re-examine themselves and realize that there is a better way of ensuring justice for good drivers and all persons who share the roads in Ontario.

Mr J. B. Nixon: Thank you, Mr Palk, for your brief. I appreciate your coming. I appreciate the points you make and I think I can try to understand your concerns quite seriously.

One of the injustices of the existing system which I see this bill as remedying—let me put it to and get your comments—is that the present system allows situations to occur where people are hit in automobile accidents. You referred to your personal experience of a hit-and-run accident. If the hit-and-run perpetrator is not found or identified, that driver cannot be sued, and so a person has no source of recovery. I see this bill as certainly righting what I think is a grievous wrong for people who are put in a situation where they cannot find someone to sue, they have suffered serious injury and they have gotten nothing.

Mr Palk: I suppose that with any example that you or I might use, we are dealing in specific examples. I am sure we could think of many specific examples. I can think of my own example and I can think of other people's examples that have happened in my own area in the last year. In my particular case, the person who hit me reported himself the following day. I can appreciate, from your point of view, that you are saving somebody who might be completely out of luck.

But in most cases, I would suggest to you, particularly in terms of hit and run situations—and I can give my example because it is quite frustrating at this particular moment, and I will deal with it in respect to the law—in this province, we have a law where for hit and run driving the maximum sentence one can possibly receive is two years. The maximum for impaired driving is 10 years.

In my mind and in the minds of most everybody I have been able to speak to on this, and that includes a wide variety of people, this is a terrible injustice. It encourages people to leave the scene of accidents rather than stay there. I could not help but sadly notice today a terrible

example in Brampton of an incident involving a policeman, and I will not go into it in detail. I am sure you can all read it in the paper. Suffice it to say that the sentence in this particular case was so ridiculous and so abhorrent that it was beyond belief.

It is my argument that this bill is in some ways going at it in completely the wrong direction. I appreciate the fact that people in Ontario want lower auto insurance premiums, but you are not going to get lower auto insurance premiums, with greatest respect, given what is in this bill, I do not believe, and still be true to the Liberal philosophy and have some sort of feeling for the individual, for lack of a better word.

When I first read this bill, I honestly could not believe it was true. If you think that simply adding 100 new policemen and putting them out on the road is going to do it, it is not. Unless you have stronger laws and give the police and insurance companies and everybody else the opportunity to get the poor drivers off the road—by poor drivers I am not talking about the people who perhaps end up in one or two or maybe even three little fender benders. Those are the classic examples which may or may not, for one reason or another, end up in the Facility Association. These are not the people who I think I am worried about. They are not the people that you, as committee members, should be worried about; it is the people who are out and out dangerous drivers, impaired drivers and people who are simply dangers to themselves and others on the road. There are so many of them. I think the direction is through stronger enforcement. I really do.

Mr Kormos: Your point is well made. Part of the problem though is that what you are suggesting deals with things after the fact, basically shutting the barn door after the horse has bolted. Mr Bates from People to Reduce Impaired Driving Everywhere was here the other day, and he talked about some of the same things you are talking about now but with an increased emphasis on the need for the government to significantly upgrade the standards that somebody has to meet before he or she can get behind the wheel of a car in the very first instance.

Mr Palk: I could not agree more with you.

Mr Kormos: This is something that can be done pretty speedily because it can be done primarily by regulation. It does not have to be in a bill form and go through the House and second- and third-reading debate and so on. Tell us about some of the things that you would have in mind. You are not a teenager any more, so you have

been through the process. You might add whether you think your views are representative of the community out there.

Mr Palk: Without trying to speak for everybody in the community, I would say that my views are very representative of the people in the community. I am sure that if given more time to prepare perhaps even more recommendations, I could undoubtedly come up with more recommendations for this committee. But the simple reality of things, as you all well know, is that with the general speed of our system of justice in this province and in this country, people who are lying in hospital beds and people who are in wheelchairs and people who are generally beat up because of accidents do not have the luxury of being able to sit back and wait.

A perfect example of this—I can go back to the case of the anomaly between hit-and-run and impaired driving—is that I have been in some correspondence with the federal Minister of Justice for the last few months in an attempt to get the whole law on impaired versus hit-and-run offences equalized so that, as an example, if the maximum is 10 years for impaired driving, it would be 10 years for leaving the scene. This would eliminate any possibility of people claiming for one reason or another, “Oh, well, I left the scene of an accident” or “I blacked out at the time of the accident,” or one thing and another.

1650

One can understand perhaps, although it is very difficult to understand, that a first offence of this type is difficult to accept, but perhaps we show some leniency. But when somebody does it twice or three times—and I can give you a perfect example of a person in my own community who had six impaired driving offences. The gentleman in question was 71 years old and the charge from the judge at the time of sentencing was simply to say, “There’s no earthly point in sentencing you to anything, because there would be no earthly point.” There are any number of examples that are perhaps not as extreme as that but none the less fall into that particular range that would lead me and many others to believe that the legal system can be found very wanting as far as the statutes are concerned.

The Vice-Chair: If I may interject at this point, we are running over time, but I would like to thank you very much for your brief. I think that all members of the committee particularly appreciate first-person accounts such as you have brought to us today.

Mr Palk: Thank you.

The Vice-Chair: Our next individual is Barry Fitzgerald from the Freedom Party of Ontario. Mr Fitzgerald, you also will have 15 minutes and I suggest that you try to maintain a portion of that for questions.

FREEDOM PARTY OF ONTARIO

Mr Fitzgerald: Let us first consider the perceived underlying problem, excessively high premium rates. My insurance company tells me that with the rate caps, it now pays out 131 per cent of premiums collected and that costly litigation is its major expense. They are very evasive about how this loss is made up, but I have noticed that some companies have been insisting that applications for new policies—also, they try to get them to buy a home owner’s policy or another type of insurance, so perhaps there is some clue as to how that is made up in that situation. Incidentally, you are dealing with that in section 76 of this act.

This is all because of price controls; they have not worked and they never will. But there is much that can be done to the civil justice system to make it more efficient, to streamline it and make it for the people instead of the lawyers. One suggestion I have in this regard is to allow lawyers to charge a percentage of whatever settlement would be handed down from the judge. This would destroy their incentive to prolong litigation and it would also be of benefit to victims who cannot afford to put the money up front for a lawyer.

Other changes are possible in making the court system less formalized, and I do not see any reason why the average person could not present his own case before a judge. The People’s Court comes to mind, that type of system, where the judge inquires, finds the facts and gives a decision on that basis.

Benefit controls are not the answer either, and this appears to be what this bill is all about, controlling the benefits. One of the stated objectives of the bill is to provide incentives for people to obtain insurance. I would argue that it does the opposite.

Thinking back, before mandatory insurance, most drivers voluntarily purchased third-party liability in order to protect themselves from civil awards against them. Now it will no-fault, almost no civil liability, and most of the rationale behind the mandatory insurance is gone.

Let’s look at the winners and losers of this bill.

Losers: seriously and permanently impaired victims. They will have to go to court just to get

the right to sue that they have now. That is an expense.

Losers: people earning more than \$450 a week net. These individuals are going to have to buy supplemental insurance just to have basically the same coverage they have now. That is not going to make their total insurance package any cheaper.

Losers: lawyers. Let's not grieve about that one.

Winners: Insurance companies, at least initially, by the reduced litigation, benefits and tax, but I expect this will be eroded by future regulations and the expected increase in accident rates.

I would also expect that benefits will have to be increased. There is a balancing act going on here and the equilibrium is not very good. This bill proposes that there be no relationship between the actual loss and the benefit paid, and that is something I strongly object to.

Another concern is the effect this bill will have on competition. It appears the accompanying regulations could produce 150 different insurance companies that have the same premiums, the same risk classification and the same premium rates. In a free market, with that many companies, consumers should be well served. Unfortunately, it takes the whim of only one government to see that they are not.

I would like to remind the committee members of the last piece of no-fault legislation that was before you in the Legislature, Bill 162. A comparison shows this Bill 68 to be much less generous to victims, so prepare yourselves for an organization of injured motorists outside.

The Vice-Chair: Any questions? I have not been given any signal.

Mr Kormos: As I asked Mr Palk, how representative do you believe your views are of the community that you come from?

Mr Fitzgerald: Well, Peter, I have asked around at work and nobody really understands it.

Most people do not even realize that these hearings are going on or that there is any shake-up in the insurance process at all. That would not make me very representative.

Mr Kormos: Okay, I hear you.

Mr J. B. Nixon: Just a comment, and I guess a question. As I have been following the debate that has been around for several years now on insurance and about insurance, what I find amazing is the very few people who even know who their insurance company is, and I do not know anyone who has read his insurance policy. Do you?

Mr Fitzgerald: Yes. I have.

Mr J. B. Nixon: Good for you. You are the first person I have met, quite honestly, who has read his insurance policy. I told myself I was going to do it, but I never did. And no one knows—now that you have read the policy, maybe you know; maybe you understood it.

Mr Fitzgerald: I read it and I understood most of it. It was a long time ago and I have probably forgotten most of it.

Mr J. B. Nixon: I was going to say I do not think anyone knows what benefits he is entitled to now under his existing insurance policy, which makes this discussion difficult. It has to be done. The discussion has to take place. The issues have to be debated and considered. But it makes it that much more difficult.

Mr Fitzgerald: Yes, I agree.

Mr J. B. Nixon: Thank you for coming.

Mr Fitzgerald: Thank you very much.

The Vice-Chair: I would just like to remind the committee that we meet again Monday at 1:30 pm. Until then, this committee stands adjourned.

The committee adjourned at 1700.

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From the Freedom Party of Ontario:

Fitzgerald, Barry



No. G-5

Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Monday 15 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 15 January 1990

The committee met at 1330 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to call the standing committee on general government to order and welcome Ralph Nader to the committee. For the next half an hour, we are in your hands. Just as a piece of advice, 15 minutes for your presentation would allow us 15 minutes, plus or minus, for some comments, questions and discussion.

RALPH NADER

Mr Nader: First, I would like to indicate the interrelationship of the issues before this committee and similar issues in the United States and hope that some of the experience in the United States can be helpful. I also want to indicate that what happens here in Ontario, I am sure, will be replayed in a number of state legislatures by insurance companies, especially American insurance companies that are operating here in Ontario. There is quite an interrelationship in terms of what happens in each of our jurisdictions. Certainly I have seen enough state legislative hearings citing Ontario and British Columbia, and I hope that my remarks will be considered in that broader context.

Second, it does seem clear that any discussion of insurance and motor vehicle accidents inevitably extends to an inclusion of issues of justice and fairness for injured people, which means the legal framework or the legal system of rights and remedies. It also involves overall broad auto accident prevention policy of the same jurisdiction. You really cannot separate any of these three from one another.

Since the contrived insurance liability crisis started in 1985 in the United States, starting with commercial liability issues, I have been very concerned about policymakers taking too narrow a focus on the more immediate perceived urgency of insurance rates, without getting down to the fundamental cause of claims in the first place, the rights of injured people to protect themselves as a consequence of their injuries, as

well as the administrative process in the courts and regulatory agencies.

If this committee, for example, were considering the damage done by leaking of water in homes in Ontario and the focus was entirely on, "How do we pay for the damage, how do we pay for the subsidence, how do we pay for other expenses?" obviously we would all be asking: "Why don't we focus on the cause of the leak? Why don't we deal with prevention as a top priority?"

I always have seen the insurance function as being more than a compensation function. It is very much a function to be used for determining risks, ranking risks and generating disincentives for reckless behaviour. That starts with the design of the automobile, the design of the highway and the behaviour of drivers, as well as the traffic mix. So any package dealing with auto insurance rates, if it is going to avoid the accusation of being a Band-Aid, must start with a policy focusing on prevention. That is not just a government policy in terms of regulating the auto industry; that is also very much an insurance industry policy that should be paired with its underwriting and compensation functions.

Here in Ontario a major portion of the auto insurance dollar paid out is for property damage, for repair and replacement of vehicles. I have seen a figure as high as 60 per cent in some of the official reports which I have gone through. That means that anyone who is concerned about the cost of claims must be concerned about the design of the motor vehicle, with flimsy bumpers, with repair-prone engineering modules in the car and with the auto repair fraud which goes on, I am afraid, on both sides of the border, the adequacy of competition in auto repair services and so on. I do not see much attention given to these areas with any specificity.

For example, a 10-mile-an-hour bumper would probably do more than any single factor other than airbags to cut down on the claims in the auto insurance area, certainly for property damage. So we must ask ourselves, what is the legislation proposed before this Legislature doing to, first, signal to Ottawa to move more quickly in establishing crashworthy standards for cars? Airbags are ready to go, but they ought to be accelerated in terms of standard equipment. In

the United States, three million airbags will be produced this year on the driver side of new motor vehicles. Twelve insurance companies are giving insurance discounts for airbag-equipped cars, ranging from \$30 to \$60, and that will go up as more cars have airbags as standard equipment. So the signal from the province, since I understand you cannot set auto safety standards at the provincial level, should be to the national government to accelerate its crash prevention and injury prevention standards. The same holds true for bumper standards. At the provincial level certainly the stronger regulation of fraudulent, duplicative, unnecessary repair practices is in order.

As I have said on a prior occasion, we in the United States have traditionally looked to Canada for emulation in social insurance and social welfare advances. Therefore, I am particularly alarmed at any process in this country which begins to slide backwards. There tends to be a contagion to this kind of slide, particularly when you read the statements, private and public, of the insurance companies and the reinsurance companies, most prominently Lloyd's of London, which are quite candid about reducing the protections under the civil justice system down to common denominators existing in Britain and perhaps eventually in Korea. Lloyd's of London presented, in Alaska a number of years ago at a conference, 21 recommendations which spelled procedural and substantive weakening of the civil justice system in terms of injured people achieving adequate compensation, so they have not been ambiguous about this.

The question really that needs to be pondered is, is it so necessary, given other corrective alternatives, to reduce the rights of the most vulnerable people in your province, people who are injured as a result of motor vehicle accidents or crashes? Is it so important to reduce their rights as the way to entertain the hope that the insurance rates increase will be moderated? This is what is so troubling. There is a clear intent on the part of this bill to take away certain benefits—I do not think anybody would deny that—most prominently pain and suffering, enjoyment of life and benefits for a significantly injured person. There is no similar guarantee of reduced rates.

There is a certainty of taking away certain rights, on the one hand, but not a certainty of reducing the rates on the other, even if that was considered a civilized exchange, which I do not believe it is. I do not believe we should, on the possibility of saving a few dollars as consumers, take away basic human rights of injured people,

which not only compensate them as human beings rather than as mere damaged chattels but also generate a modest amount of deterrence, disclosure and ethical growth of the law in making perpetrators of harm more accountable for their misdeeds.

There is just a mere \$200 lawsuit in Atlanta against Aetna which has, under discovery, generated the disclosure of internal Aetna documents advising its claims adjusters how to avoid paying legitimate claims, just out of a simple \$200 claim—the disclosure has been in the Georgia newspapers and the Georgia media—as an indication of the extra, individual contribution of lawsuits to broader awareness, broader reform and corrective action.

1340

I have always objected to no-fault on a number of grounds; that is, it undermines several of the functions of the tort system, one, as I said, being deterrence, a kind of ethical judgement on bad actors, negligent, reckless drivers in this case, but it could be reckless and negligent automobile manufacturers as well, which intertwine with the sequence that leads to the accident. It also generates more disclosure and it generates an ethical growth.

Some of our greatest reservoirs of ethical development under the law have come from appellate decisions arising out of personal injury cases: Cardozo, Oliver Wendell Holmes. These are really marvellous expansions of obligations of people to one another to take due care, to engage in proper warning, proper notice, the whole framework of accountability.

Workers' compensation is an ethical dead end. In our country it is a deterrent dead end. It is a disclosure dead end, and as a compensating function, it is frozen in time. That is a no-fault system. The question is, do we want that kind of structure to be imposed on the auto injury arena, which desperately needs a dynamism to the legal processes that affect it? Do we really want to treat human beings like chattels? We should remember that if your car is damaged, making your car whole is repairing your car. If you are damaged, making yourself whole is not just paying your medical expenses or even your economic losses; it is paying you for pain and suffering.

I was quite impressed by the Honourable Mr Justice Osborne's detailed treatment in his report about making people whole. I also think no-fault dehumanizes, as a result, the injured person, treating that person more as a chattel than anything else.

I think it is important also not to detour a proper concern with court congestion, with some misbehaviour by lawyers on both sides, with some preventable delays and say: "These are all costing money. Therefore, let's take away human rights benefit of injured people to recover for pain and suffering." That simply is not the proper way to approach it.

If you have problems with lawyers, if you have problems with courts and procedures, interminable delay motions, if the system is inefficient in its administrative dimension, confront those directly. But what troubles me is that the insurance companies, on both sides of our border, do not do that. They make very few recommendations to decongest the courts, but they make a lot of recommendations to take away rights of injured people to have their day in court.

It is just like, if you do not like the newspapers because they smudge your fingers, because they distort the truth, because they do not bring you information on time, you do not go around and say, "Let's curtail the rights of free speech." You deal with the newspapers directly. That is what I think should be done.

It is not an exaggeration to say that your threshold limit in this bill is the most draconian that has been proposed in North America. Michigan, which has the strongest verbal threshold, as you know, in the United States, is not as draconian as this threshold. What is more important is, you are breeding enormous litigation and legal fees on both sides of the aisle with this threshold if this Legislature passes it as it is proposed.

The threshold is, "in an action for loss or damage from bodily injury," etc, as a result of the accident, if "the injured person has died or has sustained permanent serious disfigurement or permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature...even though a defence motion under subsection (3) is denied, the defendant may"—still—"at trial, and following the hearing of the evidence, raise the defence of the threshold provided in subsection (1)."

An unbelievable number of cases are going to be generated trying to figure out what it means in terms of the textual words themselves, what it means in terms of schools of thought of doctors and medicine and what it means in terms of the person himself or herself. Obviously, a dentist who loses part of a finger has a much more serious disfigurement than other people who do not use their hands for their work. This will

continue not only before the trial but during the trial and at the end of the trial.

This is why no-fault has cost so much in the United States in terms of the belief that it would simplify situations and clear up judicial dockets, etc. It is because of that enormous, constant interpretation of a moving target rather than simply having a new clutch of words that have to be once and for all interpreted by the courts at the highest level. These are moving target-type thresholds because you have to take into account different medical opinions, the advance in medical knowledge, the repair of a serious disfigurement before the trial is finished and the particular work or occupation of the injured person.

The other point, of course, is that this bill almost turns the auto insurance companies into reinsurers, which I do not think is what members of the provincial parliament really have in mind. But when you treat the collateral source rule as the backers of this proposed bill have treated it, where all other sources of payment are first in line before the auto insurance source, you pretty much turn the auto insurance companies into reinsurers. Who gets the benefit of those savings? Who gets the benefit of \$450 million a year in pain and suffering benefits that are no longer going to be accorded? Who gets the benefits of the three per cent premium tax, of the added burden on OHIP, of the added burden on workers' compensation, of the added draw on sick leave, etc?

Is this simply a payment transfer bill? Is this simply shifting the burden from the private companies to the taxpayer? Is this bill a candid exposition of how much the taxpayer is going to pay in addition to how much the consumer is going to pay? The amounts are even harder to predict when they are studied. The conclusion is that Kruger and Osborne reported against the no-fault threshold system, and still the legislation disregards these reports and seems to, in the form of its backers, have difficulty getting enough data out of the private insurance companies that are necessary to answer some of these questions.

Then there is, of course, the denigration of psychological trauma, which certainly flouts some of the finest studies in medical research, not to mention common observation of the plight of injured people whom we know. It also asks people in Ontario to buy a pig in a poke. It is one thing to say: "Okay, folks, we're going to take away some benefits. Here's what we are going to save as a result, and this is what we are going to require in terms of insurance rates," and then

throw it open to a referendum. But simply to imply that rates will be moderated, "but we can't say how much, but if you don't accept this plan the rates are going to skyrocket because the insurance companies will ensure that spiral or they'll quit the province"—that to me is legislating under a threat of less-than-veiled blackmail by the insurance companies.

If you ever hear an insurance company threaten to pull out of Ontario, I suggest you play it this way. I suggest you say: "If you ever pull out of Ontario, you're not coming back for five or 10 years," and second, "If you all pull out of Ontario, or significantly pull out, then we will recognize that the people of Ontario have to have insurance and the government will establish a state plan for it," as they have in British Columbia.

That will at least confront one threat with another and nullify this kind of blackmail, which the insurance companies have used on New Jersey, on Dade county in Florida and in California. They have never done it, but it does have an impact on legislators in those states; it scares them. It is like throwing the spectre of auto insurance concern on their backs. You really must not allow them to engage in this type of activity. I know of no other industry that threatens to pull out of a jurisdiction and uses that as a political technique to get what it wants at the same time as it is almost chronically secretive in terms of what it discloses, either individually or in the aggregate.

1350

I could spend so much time listing the refusals of the insurance companies in the United States to disclose line-by-line data, to disclose what their administrative expenses are and to try to explain why some companies are so much more efficient than others and why these other companies are so inefficient in handling their claims. After they wanted to destroy the product liability rights of injured people from defective cars and drugs and so on, you could not even get them to answer the following questions: "How much have you taken in in premiums for your product liability coverage in any given year? How much have you paid out in verdicts and settlements and how much did you spend on the rest of it?"

They will say, "We don't segregate our data that precisely," yet they are claiming that the country is being wrecked in terms of global competition by product liability settlements and verdicts. But unfortunately they do not have the data as to how much they have paid out in

verdicts and settlements. I am sure that some of your advisers or staff can establish a questionnaire, which is what the Attorney General of Texas did, and suddenly the whole climate and dynamics change—a detailed disclosure questionnaire put out to the 140-odd auto insurance companies that operate in Ontario so as to put the proper burden of disclosure on their backs to determine inefficiencies, to determine dissembling; to determine the truth, in other words.

I want to say in addition that I was quite impressed by the observations of Mr Justice Osborne in terms of the legal intricacies that are going to flow from any verbal threshold no-fault. I really urge you to read his comments as they were reported in the *Lawyers Weekly* of 1 December 1989. Here is a distinguished jurist who does not have any axe to grind, but who has extremely detailed anticipation of what mischief this kind of verbal threshold will pose to the hard core of the claims of its backers that it is going to simplify things and make things more efficient.

I must also urge that you try to keep as clear as possible the preservation of the legal rights of injured people and focus on the area of loss prevention, repair practice costs and the transaction costs of dealing with claims. We must remember also that, I believe, both reports, Kruger's and Coulter Osborne's, said that overall the no-fault system being proposed would not induce any significant efficiencies, which of course is its principal reason, I understand, for being.

I just have a couple of more things here, with your permission.

The Chair: Do you think some of it could be covered in the exchange in terms of comments and questions, because we are pressed for time?

Mr Nader: Yes, it can. Just give me one more minute, if I may.

The Chair: Okay.

I have asked Premier David Peterson to meet with the concerned groups. There are whole lists of very stalwart groups here in Ontario, from trade union representatives to teacher groups to consumer groups. I think it is very important not to close out a kind of personal meeting. I think governors should do this more often. I know there are always meetings with the corporate interest groups—they seem to find their access—and I hope he will express his desire to meet and to hear these concerns, in all their specificity on how they apply to each one of these groups.

I have a number of questions that I think the committee would do well to ask the powers that be, which I can submit for the record later.

The Chair: I have Mr Kormos, Mr Nixon and Mr Runciman; four minutes each, gentlemen.

Mr Kormos: I have to tell you that I feel pressed for time. I should also tell you that we in the opposition moved to expand the period of time made available for questioning, particularly in view of the fact that there were people such as you who came long distances to make some comments but who are obviously being hindered in those comments by virtue of the time constraints.

In any event, thank you for coming. Some of us have taken to calling this new bill the Corvair of auto insurance schemes. I hope you do not mind that little bit of plagiarism. I should tell you that last Monday the government's Minister of Financial Institutions (Mr Elston)—he is the guy who is trying to peddle this scheme on behalf of the insurance industry—crapped all over you. You were not here when he crapped all over you and I notice he is not here when you are here today, so it shows you a little bit about where he is coming from.

This is what he had to say. I am quoting from the transcript, and I have to tell you that the tone of voice was as significant as the words themselves:

"Next there is Ralph Nader. He comes to Canada to tell us that we do not know how to direct our own affairs, that our policy is somehow un-Canadian. Then he admits he does not understand our system of universal health care, nor does he understand our commitment to providing a social safety net for our citizens."

The government is trying to peddle this scheme as a no-fault scheme, and we know that it is not no-fault, that it is full of fault, that what it is is a threshold scheme.

In his report, Coulter Osborne indicated that there was a trend in the United States in the 1960s and mid-1970s to adopt these threshold schemes, but that since that period of time that trend has been eliminated. Indeed, of the 18 states, the 18 jurisdictions that adopted threshold, two have now abandoned it and returned to a more appropriate system of compensation.

I wonder if you can comment on the trend that existed in the 1960s and 1970s and the fact that this trend is now reversed and that jurisdictions that adopted threshold back in the 1960s and 1970s are now changing direction and abandoning those threshold systems.

Mr Nader: Pennsylvania, for example, did abandon it, but there has been sort of a standoff in recent years. There have not been many new states adopting no-fault because the studies have

come out that it does not save on insurance premiums. It does not reduce the cost of your auto insurance policy. It redistributes the compensation pattern, but it does not reduce these costs.

If it is going to be sold as a way to reduce the price people pay for auto insurance, the Ontario government's plan is a deceptive practice, if the American experience is any standard to judge no-fault by, and the American experience has been much more extensive in that manner.

Second, where the claims for no-fault being successful are made, such as in New York state and Florida, they do not add that it is because the benefits are so limited. The benefits are ridiculous, the medical health benefit of \$15,000, for example. What will that get you? It is just like anything else. It is easy for someone to lose weight if he cuts off his arm, but I do not think he would like the bargain.

As far as Mr Elston's comments are concerned, there are a lot of things he could have said about me, but he could not have been more mistaken than to say that I do not appreciate Canada's health insurance and social service net, because I made exactly the reverse comment. I said that it is because of your health plan, universally applied unlike in our county, that it is because of your social services that you even more do not need to be inflicted with no-fault.

1400

The biggest argument for no-fault in the United States is that people cannot get their doctors' bills paid in time because they have to wait for the settlement or the trial. There is no social safety net. Here in Ontario you do not have that problem at all. You have these immediate payments under way so the principal argument for no-fault falls apart on that basis. I do very much appreciate the province's social safety net.

Mr J. B. Nixon: Two quick questions: The first question has to do with the alternative means of delivering compensation to victims of accidents whether they are at fault or not at fault, which is essentially the element of no-fault that is found in our proposal. The idea of no-fault, as you know, has supporters not only in Canada with the Consumers' Association of Canada, but also in the United States with the Consumers Union of the United States and with other distinguished jurists and experts in the area. You may recall Keeton and O'Connell from your days in law school.

Having said that and having recognized that in the existing tort system in Canada—I expect it to be the same in the United States—there are

roughly speaking 30 per cent, give or take, of injured accident victims who cannot find a tortfeasor, an at-fault actor from whom they can recover compensation and who in the end become recipients of the state's or the province's social welfare system as their only means of support, do you recognize that element of the tort system as not being desirable from a social policy point of view?

Mr Nader: Tort law only triggers when you find a wrongdoer, so obviously if you cannot find a wrongdoer—if you smash into a tree by yourself in a car you cannot blame the tree.

Mr J. B. Nixon: That is right.

Mr Nader: Then you are outside the tort system, but that is where your social safety net comes in. That is where your disability payments come in, your workers' compensation payments, your OHIP plan. That is a more relevant question in our country.

Mr J. B. Nixon: I suggest to you that it is very relevant in our situation because many of the very people we are concerned about—seniors, low-income earners, single-parent families, the people who are on the fringes of our economic society—are those who do not receive disability benefits, frequently are not in unionized jobs where there is workers' compensation available and frequently do not have the benefit of the social safety net that exists.

My second question has to do with examination of the insurance companies' profit and loss and reserves and so on. You alluded to the threats that have been made and so on, to the fact that insurance companies may pull out, which may be fair to say in the case of some large international corporations. But at two o'clock we are going to hear from Canadian insurers that are domiciled in Ontario and they do not pull out. When they leave the marketplace they are insolvent, bankrupt or just decide to close down. Keep that in mind.

You are also familiar with Kruger's Ontario Automobile Insurance Board examination. There was full and complete disclosure of all reserves, of profits and losses according to each line of insurance being sold, not just of auto insurance policies but also of other economic facts relating to all their business. He found there was 25 per cent rate inadequacy in the system. The powers of that board will continue under this legislation. We will have a rate board. The superintendent of insurance will have much greater investigative and enforcement powers under this bill. Do you not see that as beneficial?

Mr Nader: I am not so sure it can be called a prior approval regulatory system as we use that term in the United States. If you do not have a prior approval system, as many states do not, regulation is pretty weak. It should not even be called regulation. So the question is, will you have a prior approval system that will go to the assumptions of the reserving policy? It is not just that they disclose their reserves. The question is, what are their projections for inflation? To what extent are they discounting future payouts? To what extent are the assumptions undisclosed that can lead to an evaluation whether the reserves are too great? The General Accounting Office attached to Congress in recent years has come out with a different kind of analysis of reserves of malpractice insurance companies.

Mr J. B. Nixon: I understand what you are saying. You should know that in Ontario all insurance companies are required to file certified actuarial audits of their reserves and the superintendent of insurance may inspect them as he or she chooses, so that power exists.

Mr Nader: I want to note also that the OAIIB has urged a 17.1 per cent increase, of which it has already allowed 7.6 per cent; the difference is 10 per cent. The figures the insurance companies are giving indicate that 1989 is going to be a better year than 1988. In terms of their own acknowledged profit statement, the situation does not seem to be getting worse; it seems to be getting better.

Also, for your housewives and retired people, I do not think the benefits, the weekly benefits, are very ample in this bill for those who fall outside the tort system, and \$450 is really what \$140 would almost be from 1978 to now in terms of indexing. There is no indexing of any of these benefits which is another troubling problem with the bill. Why is there no indexing? Is there such an assurance that inflation is not going to appear in the future?

Mr Runciman: I want to add the thanks, Mr Nader, on behalf of my party for your appearance here today. This is your second visit to Queen's Park that I am aware of to deal with this issue and your input has been very helpful. I want to quote as well from some of the minister's comments. You were saying earlier in your presentation that no-fault does not deal adequately with a lot of the bad actors on our highways.

One of the things the minister is referring to in here—I would like to have your response to this, about dealing with other than bad actors: "First, most accidents are the result of a moment's inattention and not criminal negligence; the

mother...who turns for an instant to check her baby in the back seat and drives into the car in front of her, should she be denied benefits because of this moment of inattention? Second, should the innocent family of an at-fault driver be punished as well by withholding that person's accident benefits and consigning the entire household to a lifetime of debt as a result?" I would like to hear your response to that.

Mr Nader: Surely most accidents, little fender-benders, are momentary inattention, but that is not our greatest concern in terms of personal injury. The more seriously injured people are injured by others who are seized by more than momentary inattention. They may be seized by less than momentary inebriation, among other factors, in the serious cases, or excessive speed.

Mr Runciman: Have you taken a close look at this bill in terms of the proportion of the premium dollars that are going to be paid out in compensation? I know you have quoted Osborne in talking about efficiencies, but we certainly have not hit any actuarial studies provided by this government to justify the position it has taken with respect to that element and others as well. From our observation at this point, it would appear that Ontario is a superior model with respect to the proportion of premium dollars that is going to flow to accident victims. I wonder if you have any comment on that.

Mr Nader: They really cannot come out with explicit figures unless they run the industry. It is all self-serving. They are trying to predict what Allstate or State Farm or some of the indigenous companies are going to be doing and they are not in control. That is the problem.

Mr Runciman: Were essentially the same kinds of arguments made in the United States jurisdictions of Michigan and so on that we are hearing in Ontario by the industry, "We're going to be pulling out," cries of "increasing costs and we simply can't adequately deal with them at the premium levels that currently exist," that sort of thing? Following along on that, what was your experience with these companies in terms of their own in-house operations, trying to become more efficient? Were they cutting out the Persian carpets and so on?

Mr Nader: The simple test I always apply as to whether an insurance company is sincere when it says it is losing its shirt on a line of insurance is to see whether it is cutting its executive salaries. If you ran a business that was going into the red and in serious straits, would you not set an

example by cutting your salaries? Instead, they are increasing their salaries, their offices are very well appointed with the latest furniture and their expense accounts are very ample. You begin to wonder why they are operating in this way if indeed they are so hard up.

1410

The real observation that needs to be made is that auto insurance is a tremendous cash cow and cash flow for them. They have always been moaning and groaning because by moaning and groaning they can justify higher rates and they can put legislators and regulators on the defensive. Moaning and groaning is an occupational generic trait of the insurance industry because it is a merchandising technique.

I can give you examples where they scared the wits out of directors and officers of institutions like foundations in the United States, and they say, "The juries are going crazy in the verdicts" and so forth. They never give any data, but they just put ads in papers. All of a sudden, the foundation CEO is willing to pay \$50,000 for a premium up to \$3-million coverage for a board of 20 ladies and gentlemen who preside over a foundation that has not been sued or even complained against in 100 years. It works. This kind of fear tactic is a brilliant merchandising technique.

I might add that in the early years the auto insurance companies were, by and large, not for no-fault in the United States. This is a recent conversion because they have been refining the kind of no-fault that will give them the maximum certainty, revenue and profits—like limiting benefits.

The Chair: I am going to have to interrupt there and thank you very much for your presentation. The next group is the Association of Canadian Insurers. Mr Bethell and Mr LaPalme.

Mr Runciman: While the next witnesses are settling in, I would like to give notice of motion that the committee cover Mr Nader's expenses in coming to Toronto and appearing before the committee and giving testimony today. The clerk is not here, but I think we can deal with that at the next meeting.

The Chair: Or we can deal with it after we have heard the last deputants tonight.

From the Association of Canadian Insurers, Mr Bethell and Mr LaPalme. Whoever is going to be making the presentation, please introduce yourself. We have a full half hour, 15 minutes for presentation, because we have your written brief

in front of us, and maybe 15 minutes for comments, questions and discussion. Gentlemen, the next half hour is yours.

ASSOCIATION OF CANADIAN INSURERS

Mr LaPalme: My name is Serge LaPalme and I am the chairman of the Association of Canadian Insurers. I am also the president and chief executive officer of the Gore Mutual group. I have here with me Robert Bethell, president of the Association of Canadian Insurers.

We consider it a privilege to be here today to express our concerns, if you will, on Bill 68, particularly in that we are purely Canadian. I think it is important for us to understand that the insurance industry in the province of Ontario and in Canada is approximately 72 per cent foreign controlled. The Canadian segment of it is 28 per cent. The Association of Canadian Insurers represents 30 per cent of the automobile insurance written in the province of Ontario.

I was fascinated by Mr Nader's remarks. He seems to indicate to me that there are humongous problems in the United States, particularly so when all surveys brought to mind focus on the fact that in the United States the net compensation to those who are injured is 45 per cent. Any regime which produces these types of results certainly merits a complete overhaul, if not a closer appreciation of the system before one can make judgement, and this has been, as a matter of fact, confirmed by AIRAC, the All-Industry Research Advisory Council, which has stated unequivocally that the best method of compensation for injured persons is in fact the threshold.

Much has been said about Coulter Osborne and his remarks, but we fail to see the other aspects of that study. Allow me three quotes. Coulter Osborne suggested, "As long as bodily injury average loss costs per car continue to increase, premiums will increase." He further stated:

"Rehabilitation is an essential objective of any compensation system and it cannot be realistically achieved through the tort system. Because no-fault compensation is delivered on a first-party basis and because rehabilitation benefits must be available without undue delay, the rehabilitation criterion is better served by no-fault than by tort law."

He further stated, and it is the cornerstone to our arguments today, "From the standpoint of the compensation criterion, pure no-fault and threshold no-fault are superior to the tort system."

I believe our concerns, as we carefully study Bill 68, must be the issue of affordability, the

issue of the injured person, be he at fault or not at fault and, last but not least, the solvency of insurers. You might ask, why the solvency of insurers? Indeed, we represent the Canadian constituency of insurers in Ontario and I suggest to this body that this is home, this is our harbour and we have no place to go. We must survive if we must deliver the product which is asked of us.

I must also focus on the fact that automobile insurance is no longer a luxury item. As a matter of fact, I dare say it is not even a necessity. It is now perceived as a right: all are entitled to drive a motor vehicle. We must also focus on the province for what it is. It is the most populated province in Canada. There are more car ownerships, more vehicles on the road, a higher density and therefore more accidents. Suffice it to say that in 1988 we witnessed 203,000 accidents in Ontario and 121,000 injured persons.

When I was considering the social reform which is required here in Ontario, my mind was referred to the Scriptures, as a matter of fact to the Book of Leviticus, where I read the Mosaic law which called for a breach for breach, an eye for an eye and a tooth for a tooth. "As he hath done, so shall it be done unto him." I questioned myself if this Mosaic law is still applicable 2,000 years from the day when in fact it was echoed.

I suggest to you it is archaic. We must remove the lottery system from our reparation system and we must move to a new age, an age of social reform where all persons should be compensated regardless of fault. I believe Ontario is a caring province. I believe we as Canadians have grown accustomed to an entitlement to medicare, which is quite contrary to what happens in the United States. I also believe we have come to live with workers' compensation and have found it to be a workable system. This being the case, how can we now deny the basic rights of benefits to injured people in traffic accidents regardless of fault?

I believe we must move away from this aspect of the guilty and the innocent. I am for ever reminded, being a former insurance adjuster myself, how we can deny medical care and rehabilitation to the injured child for being guilty or, for the sake of argument, being at fault for having run between two parked cars and having been hit by a motor vehicle, or for that matter to the mother who, for a moment's hesitation, collides with a train and becomes a quadriplegic.

The existing system is unfair and inefficient. Premium levels do not differentiate between the rich and the poor, but recoveries do. Damage awards take into account the injured person's

income and status. Damage awards are premised on finding of fault, often made on the basis of unsatisfactory evidence. The very concept of finding fault after an accident which has taken place in split seconds is outmoded and inappropriate, just as in the workers' compensation context or even more so. For a seriously injured person to have the quantum of recovery affected by such a finding is, in my view, inherently unfair.

Damage awards are made on a one-time basis, requiring an estimate of future consequences for an injured person. This estimate is very imprecise and too frequently results in a windfall for the injured persons who recover more quickly than predicted or inadequate recovery for the injured person whose injury proves more permanent; inefficient because of the enormous expense involved in administering the fault-finding system.

The Association of Canadian Insurers estimates that legal fees amounted to roughly \$500 million in 1988, compounded by the 11 per cent prejudgement interest, which does affect premiums to the consumer. Apart from the fact that our society cannot afford such dissipation of resources, injured persons cannot afford it. They need the money for themselves and they need it quickly.

1420

What then should a plan, a no-fault mechanism, propose to offer? It should offer quicker loss settlement. It should offer payments to both at-fault and innocent victims. It should be a first-party concept. I suggest to you that what the innocent give up is really pain and suffering and pain and suffering already has a ceiling in accordance with the Supreme Court of Canada.

For the \$15,000 or \$20,000 that a person might give up—that is, the innocent for having suffered a whiplash—it is fair compensation and certainly one which I am prepared to give up in the case that I am at fault in a traffic accident and be injured, given the rehabilitation benefit and medical benefit that I would derive from the no-fault mechanism. More dollars are returned by way of benefits. There are lower administrative costs. There is definitely a greater emphasis on rehabilitation and greater predictability than under the present system and, of course, what we do find is cost containment.

We believe Bill 68 does answer most of these questions. It is not a perfect system, but then there does not exist any perfect system; neither does there exist such a perfect system outside Canada. We do believe, however, that Bill 68

will provide quicker loss settlement since the vast majority of claims will be settled with minimum tort action. It will provide payment to victims, even in cases where they are at fault themselves, because their need is no less than the innocent victims. It will ease the burden of the courts. It will return more premium dollars to those who are injured. It will lower the administrative costs. It places more emphasis on people injured and less emphasis on damages and far greater emphasis on rehabilitation.

We will do away with the aspect of lottery. There is predictability and, as I said before, cost containment. Over and above, under a no-fault mechanism, we will do away with the haggling over the degree of fault. This program, as devised, will provide a quick, efficient and just method of compensation for all victims of automobile accidents. I believe, and this association believes, there must not be any modification to the threshold. Indeed, if there is to be a modification to the threshold, it will call for significantly increased premiums.

In closing, and before I ask Mr Bethell to conclude, I am reminded of the words of Frank Scott, which go back to 1933. As a matter of fact, he was a member of the New Democratic Party. He stated, "Only lawyers would suffer by the adoption of a no-fault system."

Mr Bethell: I would like to speak to some aspects of Bill 68 which form part of a package of proposals and initiatives.

ACI is pleased that this government has made a series of announcements on these new initiatives and, specifically, we are glad that the government proposes to exercise more fully its responsibility for screening those who are allowed on our roads. Graduated licensing procedures and mandatory rehabilitation periods will have a very beneficial impact. We are pleased that police resources will be expanded and increased penalties for infractions will ensue. We also look forward to the ghost-car program and related efforts to ensure that motorists are fairly treated and that unsafe cars are kept off the road. We encourage the government to carry through these initiatives and, indeed, to expand on them.

We are also pleased that the government has enacted some initial steps towards tort reform. The new legislation is therefore welcome, particularly as it relates to structural settlements and prejudgement interest. More can be done to rationalize tort law, and this is a topic we would be pleased to discuss if the government is receptive to additional initiatives.

The automobile insurance industry is contributing to these accident-reducing initiatives through the creation of the Vehicle Information Centre of Canada, which will collect a much-needed database concerning motor vehicles and accidents. This database will facilitate studies of the types of damages sustained by various kinds of motor vehicles and accidents so that conclusions can be drawn as to the safest types of automobile.

Bill 68 includes a threshold, the serious permanent disfigurement test, above which the existing tort regime will continue to apply. Frankly, ACI's preference would have been for a pure no-fault regime. The official reports and commentaries all support our view that a pure no-fault regime would provide greater cost containment of premiums than a threshold. That being said, ACI recognizes that the threshold forms part of Bill 68 for reasons of public policy and it is part of the process of compromise.

Of course, no system is perfect, since any system must respond to conflicting objectives. Bill 68 may not be ideal in the view of ACI, but it is certainly a vast improvement over the existing system. In our view, there is no doubt that society is better off in a regime where everyone is assured a reasonable level of recovery than in a regime where some injured persons receive large recoveries for pain and suffering but others are inadequately compensated.

We estimate that the \$450 maximum weekly benefit, which will not be subject to income tax in the hands of the recipient, will be sufficient to maintain the full income of the wage earner for about 75 per cent of Ontario's population. Those whose income exceeds that level can obtain supplementary insurance coverage.

Our association provided detailed comments on the September 1989 discussion draft of the bill and the benefit schedule. Some of our comments have been reflected in Bill 68. While we do not make detailed comments in this submission, our representatives would welcome an opportunity to work with the appropriate technical advisers to the committee or the government to review the drafting of the bill and the no-fault benefit schedule. We would also be pleased to comment on the other regulations that must be adopted as part of this regime.

I would like to make a comment on the secondary source rule, because it does not seem to be entirely understood by everybody. What is often not appreciated is that the rule will help many injured persons who have another source for coverage apart from insurance. If an injured

person without supplemental insurance coverage will sustain a loss of earnings of \$1,000 per week and has a plan through his or her employer that would cover \$500 of this, then the no-fault benefit schedule will provide an additional \$300 from the injured person's insurer for a total recovery of 80 per cent of the \$1,000. Of this, at least the \$300 would be free of income tax. If the entitlement to the \$500 lapses while the insured remains disabled, the \$300 from the insurer would increase to \$450, all of which would be free of income tax.

There are three matters on which ACI expects the committee may wish comments from the perspective of the automobile insurance industry.

On premium rates, existing constraints imposed by government on premium rates have caused serious difficulties for the industry. It is simply not economic to provide the currently required benefits at the premium rates now allowed. If Bill 68 were not to be implemented, at least a 30 per cent increase in average premium rates would be necessary. Companies are encountering operating losses that might soon, in some cases, threaten solvency. These problems grow more serious as time passes.

The government has announced that, on average, premiums will remain unchanged in rural areas and will increase by eight per cent in urban areas. Our association estimates that while the impact will vary from company to company, this will amount, on average, to an increase of approximately only three per cent across the province. Despite this, we believe these increases should succeed for most companies in stopping losses.

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Of course, these comments assume that Bill 68 is implemented effective 1 June and that no material change is made that would increase the cost to the industry. If either assumption is incorrect, the required rate increase would be greater. Also, the zero to eight per cent average excludes any impact of the goods and services tax. Allowances must be made for the GST in the premium rates for any policy that will be in force after 1 January 1991.

Implementation of the new system and ongoing performance by insurers of their obligations so the system will work effectively are closely linked matters. ACI has discussed them with its member companies and we are confident that our members are aware of their responsibilities and are working to put the structure in place so that those responsibilities will be met.

The implementation responsibility is of course dependent upon early knowledge of the rules. We need to see the final version of Bill 68 and details of the applicable regulations, including the no-fault benefit regulation, as soon as possible if the necessary arrangements are to be made for 1 June implementation. These include contacts with our policyholders, always a time-consuming process.

On an ongoing basis, we have no doubt that the industry can carry out its responsibilities. In many ways, it will be easier for us because we will be dealing with our own policyholders.

Mr McClelland: M. LaPalme and Mr Bethell, thank you for your attendance here today. I appreciate your submission.

You were here for our previous presenter, Mr Nader, and one of the aspects that really caught my interest was his comment with respect to the dehumanizing aspects of no-fault and his concern that it treats people as chattel.

As a former adjuster, M. LaPalme, I would like you to expand somewhat. You have touched a little bit on what you believe Bill 68 will begin to do in terms of addressing the current system as it impacts on people who, I would respectfully submit, are also treated in many cases in a very dehumanizing, crass way by the system as it exists. I would like you to comment on that, if you could, from some of the experiences you saw, both as a representative of an insurer and an adjuster, of how this might—

Mr LaPalme: I should—

Mr McClelland: If we have time, I have a question for Mr Bethell. I am not sure where we are, Mr Chairman.

Mr LaPalme: I welcome your question. Suffice it to say that I was not always president and chief executive officer of an insurance company. My career started as an insurance adjuster and for the better part of 20 years I was directly involved with claims and still am to this day.

My specialty in the field was bodily injuries, and as is perhaps known by some, I was labelled the crusader for no-fault insurance in Ontario. My motivation, quite to the contrary of perhaps those who would see premiums and premiums and premiums, was really the fact that so many people went without compensation, the fact that even to this day some 30 per cent of people injured in traffic accidents have minimal recovery other than welfare, the fact that if it is dehumanizing to remove a right, it is even more dehumanizing to leave someone totally unprotected.

I have seen situations where children were in bed with absolutely no caring other than that which the state would provide. I have seen the trauma of families having lost a parent or a child and having very little to go by other than what the policy had to offer, which was very, very limited, given that he or she was at fault.

I think it moves a society that has a conscience to move away from this idea that there has to be a guilty party, to a point where we make that person a criminal and tell him, "You are limited in what you can receive," and to recognize that in a fair system all persons should receive compensation regardless of fault. Our system is humane in that if you are seriously injured, if there is death, if there is permanent serious disfigurement, the right to sue remains. However, for those who have for the sake of argument not so serious an injury, then all would be compensated under a threshold concept.

What we are trading in my view is the element that attorneys have made a big issue of, which is the issue of pain and suffering. What we have to understand is that the Supreme Court of Canada, even for the quadriplegic—meaning paralysed from the neck to the toes—would award in this environment today about \$220,000.

At issue here is, what are you prepared to give up? Are you prepared to give up the normal \$15,000, \$20,000 or \$25,000 of pain and suffering should you be injured and not at fault and to be compensated regardless of fault? What is the fairer system? The fairer system speaks for itself. All should be compensated regardless of fault.

Ms Oddie Munro: I would like to ask two questions, but I am going to ask the questions before you respond. The first is if you could comment on the impact of the goods and services tax because I am not clear how that would relate to your services and to the cost.

The second is that under the current system I gather that many of the expenses that could be placed on the legal services on both sides—I am just wondering if there will be any savings, because I understand that the insurance company also contributed to fighting the case and to the delays in the court in terms of settlement. I am wondering if you feel there would be a saving.

Related to that—I guess this is a third question—how do you see yourself being able to respond on the rehabilitation side to questions of psychological injury and trauma? We are seeing some movement, at least from the point of view of the insurance companies, in responding to that

question and have received a letter from the Insurance Bureau of Canada.

Mr Bethell: As far as the GST is concerned the insurance industry is exempt from it, which means we cannot pass those costs on. What will happen to us as we progress into 1991 is that we will be charged GST by other organizations we deal with, which will have the impact of increasing our costs. Unless we pass them through as a premium increase we will not recover that money, so that is a situation we are facing as an industry.

Ms Oddie Munro: Are you certain those costs will be hard costs?

Mr Bethell: They will be hard costs, such things as outside adjusters' fees, any service we purchase, any parts that we purchase for repairs to automobiles, etc. They will all have the element of GST, but we will not be able to recover those costs unless we pass them through in the form of premium increases.

Mr Sterling: Particularly to Mr Bethell, because you were talking about the income tax provisions of this bill, can you tell us how much is paid out in a year in loss-of-income payments to accident victims by insurance companies?

Mr Bethell: In income tax?

Mr LaPalme: No, income benefits.

Mr Bethell: You said income tax. Do you mean benefits?

Mr Sterling: Income benefits. Benefits that under the present system would be taxed.

Mr LaPalme: We could perhaps give it to you on a percentage basis to total damages awarded, but we would not have the exact number. I can get that to you, though. On a percentage basis it would be more easily handled than—the special, which means the economic loss factor, and I would be guesstimating here, would certainly represent anywhere between 35 per cent to as high as 45 per cent of the total damages paid. It is a very high number, particularly so when you are dealing with both the existing economic loss and the future economic loss.

Mr Sterling: You do not know what that would mean in dollars then, just as a guesstimate?

Mr LaPalme: No. Suffice it to say, though, that what we are offering by way of the \$450 here to the existing reform is a top-up. People fail to understand that it is a top-up. Conceivably, if you are earning \$1,000 a week and you have—

Mr Sterling: I understand that. I guess my concern here is that under this bill it exempts the payment of income tax on the \$450.

Mr LaPalme: It is tax-free.

Mr Sterling: I want to know how much you are going to save as a result of that. Presumably, if it were taxable, you would have to pay the recipient a third more in order for him to benefit to the tune of \$450, if I take that as a rough figure. In other words, the loss of revenue that this government and the other governments are going to sustain as a matter of the no income tax is very substantial and is an indirect subsidy of the car insurance system. Is that not true?

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Mr LaPalme: Let me clarify something here. What we pay is 80 per cent of gross wages weekly. If I am paying 80 per cent of gross, there is the tax implication there that we are in fact paying to that individual. To that individual, however, the payment is tax-free. But I am paying on 80 per cent of gross weekly income loss; that is what I am paying.

Mr Sterling: I am not arguing that, but under our present system any award a court makes or when a settlement is made, you have to pay income tax on it.

Mr Bethell: Under the existing system that we have in place today, when we pay accident benefits they are free of income tax in the existing regime.

Mr Sterling: What is the difference between this one and the other?

Mr Bethell: The difference is a substantially increased benefit.

Mr Sterling: No. Forget the \$450. You say there is no income tax difference between the proposed system and the existing system.

Mr Bethell: There is no income tax paid on the existing accident benefits.

Mr Sterling: Even if it is supplement income?

Mr Bethell: Yes, that is correct.

Mr LaPalme: It is an indemnity.

Mr Ferraro: Could I clarify a point?

The Chair: Quickly.

Mr Ferraro: Any lump sum payment in a tort system now is income tax free.

Mr Sterling: I did not say lump sum payment.

The Chair: He was talking about weekly benefits.

Mr Sterling: I was talking about—

Mr Ferraro: I thought you said lump sum.

Mr Sterling: It is income tax free too.

The Chair: Thank you, gentlemen, for your presentation.

From the Ontario Psychiatric Association, I have three gentlemen listed: Dr Margulies, Dr Hector and Dr Beausejour or anyone else who is with you. The clerk of the committee is distributing the presentation. Gentlemen, you have half an hour. A suggestion would be 15 minutes for your presentation, allowing 15 minutes for some comments, questions and discussion by the committee. We are yours.

ONTARIO PSYCHIATRIC ASSOCIATION

Dr Beausejour: The Ontario Psychiatric Association wishes to thank you for inviting our comments and recommendations concerning the proposed Ontario motorist protection plan.

My name is Pierre Beausejour. I am the incoming president of the Ontario Psychiatric Association and my clinical work in Ottawa has to do with psychiatric rehabilitation. My colleague to my left, Dr Ian Hector, is past president of the Ontario Psychiatric Association, and Dr Alfred Margulies, on my right, is the chairman of our public relations committee. Both of them have had experience and expertise in the issues relating to Bill 68.

The Ontario Psychiatric Association is a voluntary, incorporated, professional association with 860 psychiatrist members. It was founded in 1920 and its main role has been to promote an optimal level of professional development for the best of patient care and to advocate for the mentally ill and their families. In that regard, our presentation today will focus on our serious concerns about important aspects of Bill 68 and the principles involved.

In my own personal clinical work in psychiatric rehabilitation there are always three important obstacles to service delivery and patient care. I call them stigma, dogma and turf.

Stigma issues are possible in the way the proposed bill is written at the moment. Discrimination against those who suffer serious emotional injuries is present and the threat of stigma is reinforced.

In terms of a dogmatic approach, the bill as it now stands makes a distinction between physical and emotional injuries. In our clinical practice, this distinction, this dogma, is not that clear.

Third, in terms of turf issues, the proposed bill will bring three obstacles. Emotional traumas will be recognized in the bill in terms of benefit for loss of income, but no compensation or right to sue will ensue. This creates a turf issue.

Another one is that injury in the workplace, as under the present Workers' Compensation Board, is recognized and emotional injuries are

recognized, but injury in a motor vehicle will not be recognized under the proposed law. Also, there is a distinction made between the visible physical injuries sustained by people and the invisible emotional injuries they sustain.

I would like now to turn to Dr Margulies to present the OPA brief.

Dr Margulies: The Ontario Psychiatric Association has serious concerns that the proposed Ontario motorist protection plan discriminates against those who suffer emotional trauma or disability as a consequence of a motor vehicle accident.

Specifically, the no-fault bill states that the owner or driver "of an automobile is not liable...unless...the injured person has died or has sustained,

"(a) permanent serious disfigurement; or

"(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature."

Aside from the emphasis, the words are those of the proposed bill.

In other words, any emotional disturbance, disorder or reaction flowing from or associated with an automobile accident or accompanying physical injury, however severe, serious, permanent or whatever, cannot be the object of litigation in terms of the individual being permitted some sort of compensation through litigation.

For years, throughout the centuries, the mentally ill patient has been the object of scorn, ridicule, fear and isolation. Even in our enlightened modern era, remnants of the stigma associated with mental illness can be found. One would like to think that as the 20th century comes to a conclusion, institutionalized discrimination towards the mentally ill will have ceased. However, the current legislation proposed by the Ontario government is clearly, in our opinion, highly regressive in providing that only injuries that are physical in nature may be compensated.

We feel that to deny individuals the right to obtain compensation should they suffer a mental disturbance associated with an automobile accident clearly discriminates against those whose personality structure leaves them vulnerable to emotional disability. The law has always recognized the principle of vulnerability, known as the so-called concept of the thin-skulled individual, and has in the past extended it to emotional illness. To deny the potentially serious and even permanent effects of a psychiatric disorder, whether it is associated with a physical injury or not, is to ignore the reality of mental illness and

amounts to excluding the most vulnerable segment of our society from the protection of the law.

While there are many features of the proposed legislation that are laudable, including the increase in no-fault benefits and the emphasis upon rehabilitation, we as psychiatrists are greatly concerned with the potential discrimination against the mentally ill and mentally disabled.

The Ontario Psychiatric Association deplors the omission of emotional disturbance as a compensable illness and believes that the legislation should expand the definition of injury or illness that can be the object of litigation so that mental illness and disability receive the same recognition in law as physical illness and disability.

The Canadian Psychiatric Association, with which we are affiliated, also has similar concerns. They have, I believe in correspondence to the honourable Murray Elston, expressed their wish to support Ontario Psychiatric Association concerns to the government regarding exclusion from the ability to sue under the proposed Ontario motorist protection plan. In brief, our concerns are in terms of the discriminatory aspect, which we feel adds to the stigma of mental illness.

Dr Hector: Closed head injuries, particularly those associated with momentum, that is, head trauma while moving rapidly as in a motor vehicle, are often followed by two specific behavioural impairments. In coup, that is, injury to the side of the brain struck, and contrecoup, injury to the opposite side of the brain, lesions result in discrete impairment of those functions mediated by the cortex at the site of the lesion. Clearly distinguishable focal deficits are less likely when there is a great deal of momentum upon impact. In this instance, victims of trauma occurring with momentum are more likely to give a pattern of multifocal or bilateral damage without clear-cut evidence of lateralization.

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In the second, specific impairments that can be associated with localized brain lesions involve the frontal and temporal lobes, those areas most susceptible to the damaging effects of head injury. Problems in the regulation and control of activity, in conceptual and problem-solving behaviour and in various aspects of memory and learning are common. The more severe the head injury, the more likely it is that the patient will display deficits characteristic of frontal and

temporal lobe injuries and the more prominent these deficits will be.

Damage in these areas tends to have significant effects on the patient's personality and social adjustment as dominant parts of the long-term effects. Even when subtle, these personality changes will impede the patient's return to psychosocial independence. Even minor head injury is accompanied by substantial delay in returning to studies or to gainful employment. Return to the workforce is likely to be at a lower level than before. Impaired judgement, childishness and egocentricity, inability to plan or to sustain activity, impulsivity, irritability and low frustration tolerance combine to render the individual unemployable or only marginally employable.

Because of these qualities and despite their residual capacities, these patients are often unable to form or maintain close relationships, so that those who have not been rendered silly and euphoric or apathetic by their injuries are often lonely and depressed as well. The diffuse damage that accompanies much traumatic brain injury consists of minute lesions and lacerations scattered throughout the brain substance that eventually become the sites of degenerative change and scar tissue or little cavities. This kind of damage tends to compromise mental speed, attentional functions, cognitive efficiency and, when severe, high-level concept formation and complex reasoning abilities.

These problems are typically reflected in patients' complaints of an inability to concentrate or to perform complex mental operations, confusion and perplexity in thinking, irritability, fatigue and an inability to do things as well as before the accident. Slow thinking and reaction times may result in significantly lower performance scores on timed tests, particularly those requiring concentration and mental tracking. This represents a deficit in processing information, often expressed as confusion of items or elements in orally presented questions, feelings of uncertainty about the correctness of their answers, distractability and fatigue.

In a most important American study, a prospective study performed by Barth and Rimel, in a large series of mildly injured patients 79 per cent reported persistent headache, 59 per cent complained of memory problems and 34 per cent of those who had been employed at the time of injury had not yet returned to work three months later, yet only two per cent of this group showed positive neurological signs at three months' follow-up. Headache, dizziness and

symptoms commonly associated with mental or emotional stress, such as anxiety, insomnia, irritability, fatigue and dulled intellect, persist long after the injury. There is good evidence that these symptoms are less of a neurotic phenomenon than has been thought in the past.

Dr Beausejour: Every one of us will, during our lifetime, experience stressful life events, very stressful ones. This imposed stress upon every one of us will lead to emotional reactions; some of them may be very severe and extreme. Each one of us will react to that stress according to the severity of the stress, according to our own personality makeup, who we are and how we react to life events around us and also within the context of our own personal experiences at the moment and in the past.

We know very well that stressors which have to do with a threat to physical integrity or emotional integrity of the individual are very high stressors. We know that for the person, for example, who experiences a myocardial infarction, we think automatically that there must have been a lot of stresses in the workplace, in the home, with the children, etc. It has been recognized for centuries that way.

The police officer who answers an armed robbery call and gets shot suffers physical injuries but also emotional injuries and trauma related to that which may disable him and prevent him from doing his job properly later on. The woman who gets raped and suffers both physical injuries and emotional trauma—some call it the invisible wound—will have repercussions and disabilities that may last for ever. Being involved in a motor vehicle accident can have the same shattering effect, and the responses to stress will be the same. There are very clear-cut signs and symptoms identifying post-traumatic stress disorders that are well documented.

For most people, these symptoms will recover within the first six months; they are called acute reactions. For some other people, the response to stress and the traumatic events will occur only months or years later, and it is called a delayed reaction. For other people, they will have the acute reactions right away, but they will have symptoms that will persist and become chronic. This is a small group of patients, but it exists.

Furthermore, patients who experience post-traumatic stress disorders and also as a result of concussions in their accident may end up months later or years later with physical injuries, which will present as emotional personality symptom functioning.

It is for these reasons we feel that emotional trauma or injuries are important and that they be included not only in the benefit package but also in the compensation being allowed under the law.

Dr Margulies, could you conclude our recommendations?

Dr Margulies: Our major objection with respect to Bill 68 is in the so-called threshold, which in its definitions specifically excludes any form of mental illness whatsoever flowing from, associated with injuries or with a motor vehicle accident itself. It is the recommendation of the Ontario Psychiatric Association that emotional illness be given the same treatment as physical illness. It believes that the legislation should expand the definition of injury or illness which can be the object of litigation, so that mental illness and disability receive the same recognition in law as physical illness and disability.

The Chair: Gentlemen, thank you for your presentation. I have Mr Kormos, Mr Nixon and Ms Oddie Munro. Mr Kormos, four minutes.

Mr Kormos: You spoke of the scenario of victims of violent crime. Most of us are beginning perhaps more and more so to understand the sense of injustice that the victim feels. I think that is reflected as often as not in the inevitable interpretation of, let's say, a custodial sentence that is imposed on the offender, which can never, and rightly so, seem appropriate in the eyes of the victim. The victim says, "But I have to live with this for the rest of my life," be it a permanent injury or merely the memory of that trauma. He or she, the offender—gets out of jail after one year, two years, three years, however many.

Speaking of the innocent victim of a motor vehicle accident now, and recognizing that nobody in our society should go without appropriate treatment and rehabilitation, I would think that same sense of injustice would accompany not just the innocent victim of a violent crime but the innocent victim of, let's say, a motor vehicle accident. To be told that he or she is going to receive the very same benefits as a negligent, drunken, careless or reckless driver, when indeed there is a quantifiable element of pain and suffering and loss of enjoyment of life, I would perceive that as generating a great deal of additional discomfort and perhaps the sort of thing that you people would have to deal with. The sense of injustice in that instance would seem to me, as a layperson, in many cases to be capable of becoming pathological. Can you talk about that?

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Dr Beausejour: I think that this certainly has the potential to happen, and it does happen; it is part of the reaction that people have in these circumstances. However, in our clinical work as physicians, we are concerned about the welfare of all our patients. The other side of the equation is that we agreed that the drunken driver has responsibilities, but also that person has a need for rehabilitation and treatment that should not be denied.

I am also very concerned about the impact that has on the family of that person also, and what can be done to help the family members of the drunken driver to cope with that situation and the emotional trauma that exists for them too, because they are secondary victims of that.

Mr J. B. Nixon: I was taking a look at the brief of the Canadian Psychiatric Association, which you attached to yours, and it says quite clearly on page 1, "It is the position of the Canadian Psychiatric Association that patients suffering from a mental disorder...should be able to obtain medical insurance coverage without prejudice."

It goes on to say, "It is essential that benefits be available for psychiatric disorders...and that necessary psychiatric treatment and rehabilitation be provided." Is that not clearly what this bill does: guarantee those benefits for all regardless of who is at fault?

Dr Margulies: Yes, it does; but it also excludes those individuals who suffer a mental illness from the benefit, shall we say, of being able to institute litigation that physically injured people have.

Mr J. B. Nixon: Can I ask you, very quickly, a second question? Dr Hector, you spoke about the head-injured. There is some discussion to be had, and I think it will continue, around the definition of the threshold because in an undertaking that was publicly given by the Insurance Bureau of Canada to this committee and that all members have. The Insurance Bureau of Canada, in talking about the threshold and the effect of psychological or psychiatric disorders and whether or not they would exceed the threshold, said that the only "mental" injuries excluded by the threshold were those where there is no physical cause for the symptoms of the injured person.

Clearly, if that is the applicable definition, the head-injured would exceed the threshold because they would have a physical cause. I recognize that there is no neurological manifestation after a period of time of the injury, but clearly there is a physical cause that generates a disorder, psychi-

atric or mental or whatever, which is continuing and permanent in nature and therefore they would exceed the threshold. Would you not agree?

Dr Hector: The central purpose of my presentation was the dilemma of differential diagnosis and the uncertainty that remains about the nature of the so-called post-concussive syndrome. We have a tendency to view those symptoms as emotional, psychogenic or neurotic in origin and not to recognize them as probably arising from direct injury to the brain substance itself. In terms of differential diagnosis it can be very difficult to establish if that is the case, and a good deal of controversy still exists surrounding that particular issue.

Mr J. B. Nixon: That controversy exists in a tort system or a no-fault system. I assume that lawyers always debate it in a tort system, but assuming you can prove the relationship, therefore under the new system the head-injured will be beyond the threshold, have the right to sue and to full benefits under the new no-fault regime and under the old tort system.

Ms Oddie Munro: I think we have heard, and you may not have been privy to the discussions that have gone on, that the regulations themselves and the interpretation of no-fault benefits, and in addition the right to sue, have included the physiological correlates of stress and trauma, in addition to physical manifestation. Second, the wording of the regulations clearly mentions mental illness. I do not know if you were aware of that.

The Ontario Psychological Association, for example, was asked to bring forward an amendment which it felt would clarify it. I think there is a lot of well-meaning concern, including yours, about recognition of mental illness, but I was wondering if you would be willing, either at this point or later on, to comment on not only the introductory speech by the minister but also the regulations as they relate to the bill itself and whether that goes any way at all to your concerns on psychiatric illness.

I do not know whether psychiatric illness now subsumes a lot of the rehab procedures and bodies of knowledge including psychological, but certainly I would think that the classical arguments would still hold as to what school holds what. Anyhow, I think you know what I am getting at.

Can you let me know, either now or in the future, whether or not the regulations, the introductory speech by the minister, and in fact the comments on psychological by the insurance

association mentioned by my colleague, would go any way at all to allaying your concerns over our the bill's recognition of mental illness?

Dr Margulies: Our understanding is that our quarrel is not to any great extent with the extension of no-fault benefits or rehabilitation which, I understand very clearly, include emotional illness of a variety of kinds stemming from an automobile accident. Our major concern is the fact that emotional illness is not included in the threshold whatsoever. So that an individual who may suffer a serious mental illness, permanent or otherwise, has no recourse in law to be compensated for his pain or suffering, for the deterioration in his relationships, for the damage to his business or whatever. That is our concern to a great extent.

Ms Oddie Munro: I think they will. I mean, that is what I am asking, whether or not you would take a look at the differences of opinion. Certainly the spirit of the wording, the objective wording, is such that psychological trauma will be considered in terms of no-fault benefit and in terms of the right to sue. Psychological trauma and psychiatric rehab surely must have some place in your definition of mental illness and in the classification system. Of course, you would not have been privy to all of this discussion here, and we are terribly interested in what you have to say and I think it is a good set of concerns that you brought before us, but I am wondering if you could contrast what we already have and where it is you are coming from so I have a better idea of where the differences are now.

Dr Margulies: I am afraid I am at a disadvantage because I do not know what transpired earlier. But unless there has been a major change in the definition of the threshold or the implications of the definition, I have difficulty seeing how any emotional illness, other than that caused by demonstrable physical disturbance, can be included. And to a great extent, notwithstanding the minor head injuries—

Ms Oddie Munro: Even with the physiological correlate being put in there as part of the manifestation?

Dr Margulies: In many emotional illnesses there are no demonstrable or consistent physiological correlates. One cannot say that because this function has been disturbed or this bodily function has been disturbed, therefore it caused this individual to develop a depressive illness. You just cannot. It is impossible to say that at this point.

The Chair: I am going to have to interrupt at this point. Mrs LeBourdais, very quickly.

Mrs LeBourdais: Perhaps you have begun to address my question. Just as it is implicit that those accidents which meet the threshold allow someone to sue—there would be emotional or psychological problems associated with the operations, the medication, the rehabilitation, because of the severity of the initial injury—I am just wondering if there is any situation in which a physical condition could come about from a psychological condition which was initiated by the accident, severe enough that it could then meet that threshold.

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Dr Margulies: I think theoretically that is very possible. I might add that it is not just possible but quite common to have emotional disturbances in the absence of significant physical injury.

Mrs LeBourdais: Therefore, if that is the case, and you say that you feel it might be, that would give psychological injuries that are of a certain severity recourse to hence meet the threshold and then be compensated.

Dr Margulies: Only those, as you indicated, flowing from or associated with a previous physical injury.

Mrs LeBourdais: No, I was suggesting only a psychological injury initiated from the accident, which in turn caused physical difficulties that would be then severe enough to meet the threshold.

Dr Margulies: In theory, that is possible. In practice, it does not happen very often.

Mrs LeBourdais: I see. Thank you.

The Chair: I am going to have to thank you gentlemen for your presentation. If there is any further dialogue, Ms Oddie Munro, maybe you would like to talk to them separately, or if you have any further submissions for the committee, send them care of the clerk.

Next is Mr Eddie from C. R. Eddie Engineering Inc, and I believe it is exhibit 37, but I also believe the clerk has distributed a further brief. We have half an hour. If you could take about 15 minutes for your presentation and allow 15 minutes for some questions and comments from the committee members, we would certainly be grateful. We are yours for the next half-hour.

C. R. EDDIE ENGINEERING INC

Mr Eddie: Thank you very much. I appreciate your setting aside the time to hear me. My remarks will be brief.

I am a mechanical engineer and my field is automotive safety. I want to give you a bit about my own personal background so that you will know how I came to be involved in this issue, and then I want to talk to two major questions. The first one is, what would be the effect of no-fault insurance on the accident rate? And the second is, what would be the effect of no-fault insurance on the cost of accidents? I want to discuss some legislation which has been passed that has had a beneficial effect on insurance costs, and then I have two very specific recommendations.

I am a mechanical engineer. I am a member of the Society of Automotive Engineers and a member of its accident investigation techniques advisory committee. I was privileged to be a member of the Solicitor General's Special Committee on Police Pursuits.

I work in the field of automotive safety. I provide what are known as vehicle collision reconstructions. I go and I look at the cars, I look at the roadways and the marks on the roadways, and by applying engineering principles, I determine how the accident occurred. It is a very in-depth investigation into the cause of the accident. It is something like what you might have heard about for aircraft crashes but on a much smaller scale.

I do this for insurance companies, I do this for victims, I do this for people who are charged with criminal offences and I do this for the crown. I have done this for about a dozen years, and over those dozen years I have probably done thorough investigations into the cause of at least 500, perhaps as many as 1,000, automobile accidents.

The first question—and this is how I became involved in this matter—is, what would be the effect of no-fault legislation on the rate of automobile accidents? As near as I can determine, the answer is that the frequency of automobile accidents would go up.

I can give you two bases for that conclusion. You will see a graph appended near the back of my presentation. That is an excerpt from a document published by the general statistical analysis branch of the government of Quebec. I believe it is the upper one on the page. It shows the rate of automobile accidents per certain number of vehicles being operated.

You will notice that it continues in a nice, gentle decrease from 1974 to 1977. There is a little bit of noise in the curve, but there is a decrease. Some of the things I will talk about later will explain why there is a general decrease in the amount of automobile accidents. Auto-

motive travel, in general, is becoming safer all across North America.

In 1978, when they introduced no-fault insurance, there was a sharp upward step. The gains of the last five years were lost completely. I do not think you need four degrees in statistical analysis to see that that is a sawtooth curve with a step at the point where no-fault insurance was put in place.

My detailed submission refers to other statistical analyses which you can go to for an expansion of that point, but you might want to ask yourselves why that would happen. If a person is involved in one accident in which he is at fault and then he is involved in another minor accident in which he is at fault, the underwriters from the insurance companies will tell you that person is six times more likely than the overall driver to cause an accident in which someone is severely injured or killed. The last thing you want to do to that person after that second minor accident is to pat him on the shoulder and say: "There, there. It was nobody's fault. Don't worry about it." It is the wrong message to send.

Someone who is a marginal driver, about to slip to the position of being the cause of a serious accident, needs to be sharply reminded at that time of his responsibilities when he operates an automobile. There are many systems in place. There are the Highway Traffic Act, the Criminal Code and your insurance premiums. I think it is an excellent thing when that person's premium goes up from \$700 a year to \$2,000 or \$3,000 a year. It makes them realize just what the cost is of the type of driving that they are doing. If you implement no-fault insurance, it will remove that deterrent. The other deterrents will still be there, but you should no more remove the fault deterrent than you should remove the provisions of the Criminal Code or the Highway Traffic Act.

What is the effect of no-fault on the cost of an accident? I say the effect is none, zero. There is no effect. An accident that occurs under a no-fault regime is the same as one that occurs under a fault regime. The pain is just as much for the people who are injured. The ones who are dead are just as dead. The ambulance call costs just as much. It costs just as much to provide the police services. It costs just as much to provide the hospital services. On an individual accident basis the cost is the same. Because the number of accidents is likely to increase, overall, the costs will go up.

It has been said that the central issue here is the cost of an automobile insurance premium. I do not think that should be the central issue. The

central issue should be why there are so many automobile accidents. You have an opportunity here which is slipping through your fingers. The attention of a lot of the population is focused right now on the problem of automobile insurance. It is focused on the problem of dangerous driving in this province.

You can use that political will to bring about much safer roadways. But you are dissipating it, in my view, by deciding who should pay—not how much should be paid, but who should pay—transfer a bit of the cost from here over there, some to the general public, some to the victim, but no basic change in how much.

When legislation was passed here to enforce the wearing of seatbelts, the severity of automobile crashes decreased and the severity of injuries decreased. When legislation was passed to enforce the wearing of motorcycle helmets, the severity of damages decreased. All of these things acted to keep insurance costs rising to a minimum amount. The daytime headlights will help in reducing the number of accidents. Building limited-access highways reduces the number of accidents. They are 10 times as safe as a normal highway. There are all sorts of legislative activity that has taken place and will take place, and that is where the effort needs to be concentrated.

1520

I have two very specific recommendations. The first one is to retain the right to sue and thus retain the deterrent effect of the present system of automobile insurance. The second is to recommend to your associates that a committee be struck to look into the problems of vehicle traffic safety in the province so that we can gather this force and this public opinion together to provide benefits that everyone can receive, to reduce hospital costs, to reduce policing costs, to reduce court costs and to reduce the number of people who are injured.

In summary then, as a vehicle and automotive safety engineer, I believe that the implementation of no-fault insurance will increase the rate at which traffic accidents occur. I do not think it will change the cost of one accident. I think we should take positive steps to reduce the number of accidents. Specifically, what I think you should do is to reduce accidents and not rob the victims.

Mr Runciman: I want to thank you for appearing before the committee and presenting your well-reasoned case. I would like to hear your response to the government's initiatives in this respect. I have raised this issue in the House

in terms of the Quebec experience and the increased number of accidents, the increased fatalities and the projections that are made in terms of how this is going to impact on Ontario.

The suggestion was made in a study done at the University of Toronto faculty of law, that we could be looking at up to 100 additional fatalities on the roads in Ontario, if we take the Quebec figures and apply them to this province. The minister has essentially refused to answer the question.

I suspect, and indeed I think it is pretty clear, that the government shares those concerns, although it is not verbalizing them. It does share them, and that is pointed out quite clearly by the initiatives it announced at the same time that this no-fault program was introduced: the increased police enforcement, the higher fines for speeding and a number of other initiatives, some of which you have touched on.

Do you think the initiatives that the government has announced are going, in any way, to balance off the downsides of bringing in a no-fault system in terms of highway safety and accident frequency?

Mr Eddie: I think we should have those initiatives entirely separate from any questions of how much automobile insurance premiums are. I commend those initiatives. I would very much like to see much more severe enforcement of the seatbelt legislation. A good deal of my work involves looking at automobiles in which people were not wearing seatbelts, in which if they had, they would be uninjured.

I support that wholeheartedly, but I caution you that if you read the records around the time the Quebec legislation was being passed, similar initiatives were taken in Quebec. They recognized in Quebec that it would be a problem. They attempted to offset it, but in spite of their attempts at offsetting it, the increase happened.

Mr Runciman: That is interesting. I had not heard that indicated to us prior, that Quebec had gone through the same sort of experience in terms of introducing initiatives that were going to hopefully counterbalance the negatives of no-fault in terms of highway traffic safety. The experience in Quebec, to your knowledge, is that in fact it did not have the desired impact.

Mr Eddie: That is correct.

Mr McClelland: By way of comment as well as question, Mr Eddie, let me first of all thank you for attending here today. I think it is important to draw a couple of things to our attention in response to your comments and also to ask you to respond, having heard what I would

like to share with you; and, Mr Runciman, your comment. I think for the purpose of the record it is important to note that in 1978 Quebec introduced a no-fault program, as we well know, and there was a slight increase in the level of accidents up to a certain point, and then it levelled off.

Having said that, it is also important to note that a rating system was put into effect in terms of fault with respect to driving. There is a tremendous misconception by consumers and many people. I think it is important that we as legislators make it known to the public and to people across this province that the no-fault provision of the legislation is vis-à-vis the ability to collect. But no-fault does not imply any kind of amnesty for bad drivers. In fact, a rating system will be available for insurers to have a rating, a fault aspect, if you will, with respect to the premiums that are paid.

In the event that I am a poor driver and you are a good driver, sir, you will not pay as much in terms of auto premiums as I will under the proposed legislation. I suggest that clearly is contrary to what you said on page 2 of your submission. I say, with great respect, that you are in error when you say that "drivers with a history of causing collisions would pay no additional premium." That is not necessarily the case, nor accurate. That is very important. I want to draw that to your attention.

I also want, by way of comment, and I am not here to join in any particular debate with you, to say that I think the initiatives that are being undertaken are part and parcel of what you have suggested in terms of tougher enforcement and additional police officers, more stringent fines and a graduated system of licensing. I would be interested in your comments in response to that, bearing in mind that Bill 68, the proposed legislation that we have before us, does allow for rating. I think there is some evidence that says that has impact on driving.

I think it is also important to note that Coulter Osborne's report which was submitted said that there is, on balance, across the board, no empirical data which suggest that a no-fault system has any impact on the driving record of the consumer.

Mr Eddie: There are several points there to answer. First, I commend and support all activities which are going to improve traffic safety, as I have said before, and I think this is a time when you can get public support, when it may be difficult to get public support for additional expenditures in some areas. They

should be made and I commend all of those things.

The increase in accidents in Quebec was not minor. It was 40 per cent in that year. I do not think that was minor. It took another six years of steady reduction before it finally came back down again. It is the message that is being sent out nevertheless, that these things are no-fault.

With respect to the rating system which is proposed, if I understand it properly, it is similar to the one in which fault is apportioned in a minor collision accident by agreement between the insurance companies. A small chart is drawn up, and based on the physical configuration of impact, fault is assumed. That is often not sufficient to honestly determine who was at fault or the application of fault. It is a technical point and it will take a long time to go through it in detail.

I still fear, and fear very sincerely, that there will be substantial increases as a result of this legislation.

Ms Oddie Munro: I guess we are relying on the fault aspect of the insurance bill to punish the bad drivers and in fact to go so far as to be helpful in recovering payments that have been made out, for example, on lost income. I am just wondering if you could let me know how much tougher the fault aspect of the bill should be in order to be as fair to the drivers, motorists, etc., in the province as you would like.

In my mind, the fault aspect, combined with the deterrents of other ministries—you speak about having all this in one ministry, by the way—is fairly stringent, including, as my colleague has indicated, the rate increase and the penalizing on driving records, the fact that you would not be able to have your licence back if you were convicted of drunk driving. I am wondering what other measures you think should be put in the fault section.

Mr Eddie: On the fault section? Retaining the right to sue essentially puts in place a complex mechanism to determine fault in a way that is not determined in the other systems. You can be, for example, guilty of a Highway Traffic Act offence and in the following civil trial have no fault responsibility assigned to you at all, and the other driver might be completely at fault. It is a more sophisticated method of determination. The first problem is to find out who really is at fault before you can apply the sanctions. If you remove 95 per cent of the accidents from the fault-finding mechanism, then you will not know who really is at fault.

1530

Ms Oddie Munro: I do not think the bill is doing that. I think the benefits are paid out regardless of fault, as far as rehab, etc., and the blame and the deterrence are clearly present in the fault aspect, even to the point of the threshold. The threshold results in moneys being paid on a claim for personal injury, but as far as any deterrents to that person for bad driving, those deterrents will be applied.

Mr Eddie: My understanding from a press comment was that this legislation would remove 95 per cent of the litigation trials, remove 95 per cent of the motor vehicle accidents that currently are being litigated from that system. Maybe that was incorrect; maybe 95 per cent of the trials are not going to be eliminated, but that was certainly my understanding.

The Chair: Can we just have a point of clarification from the parliamentary assistant?

Mr Ferraro: I hope I am helpful, but Mr Eddie is right. There have been statistics quoted that from 85 to 95 per cent of all litigation would not be required, essentially dealing with pain and suffering cases. But as indicated by a few of the committee members, fault, unlike in Quebec in 1978, when it came up with its plan, will still be a determinant in establishing rates in Ontario.

It is our belief, quite frankly, that if you get in an accident or you get speeding convictions, you obviously should pay more for your premium than someone who is a good driver, and that that in itself will result in being a deterrent. Quebec obviously did not have that until 1983, even though the charts showed a decline.

Mr Callahan: Very quickly, I notice you have previously testified in the Ontario Supreme Court and county and provincial courts as an expert witness on behalf of the plaintiff, defence and the crown. What proportion of your professional background was related to civil action as compared with criminal action?

Mr Eddie: Most of it is civil.

Mr Callahan: Most of it is civil; 95 per cent civil?

Mr Eddie: It is 80 per cent civil.

Mr Callahan: Did you take any steps to perhaps compare this to a publicly run program such as in Manitoba or British Columbia?

Mr Eddie: British Columbia reports having very low insurance premiums, coupled with the highest accident rate in Canada.

Mr Callahan: So just to speed it up, your comments with reference to the Quebec experi-

ence, because of the no-fault inclusion, would be far worse than a public auto system.

Mr Eddie: If the effect is to increase the participation of dangerous drivers, yes.

Mr Callahan: Okay. Just finally, in your involvement in the criminal process, would you not agree with me that in the majority of cases, even in simple accident cases, there is at least a charge under the Highway Traffic Act levied against the offending party? Is that not right?

Mr Eddie: Yes.

Mr Callahan: So there is, in fact, a deterrent, because the deterrent would be the demerit points or the criminal conviction they would reap for being at fault either in a serious fashion or a less serious fashion.

Mr Eddie: Absolutely. It forms part of the deterrent system.

The Chair: Mr Kormos, four minutes.

Mr Kormos: I think I can do this in four minutes. I want to correct—far be it from me to say that the parliamentary assistant to the minister is wrong again, but there he goes. The impact of this legislation is not going to eliminate 95 per cent of all lawsuits, far from it, because we know that the vast majority of personal injury claims are resolved without litigation. It is a small minority that ever ends up in court, and even a big chunk of those cases are resolved without lawyers.

What it is going to do is to make sure that over 95 per cent of all innocent victims never get a penny in compensation for their pain and suffering or their loss of enjoyment of life. That is the impact of the threshold and it has nothing to do with the misnomer of no-fault. Here is where I will join with the other members of this committee in agreeing that—

Mr McClelland: Oh, oh, I could be in trouble.

Mr Sola: Maybe we should change our minds.

Mr Kormos: You see, they are going to change their minds about public auto insurance and I am going to change their minds about their being wrong all of the time. They are only wrong most of the time, even with respect to this bill.

I appreciate that even in the scheme the Liberals are proposing here, insurance companies are going to assess fault for the purpose of assessing higher and higher premiums. Mind you, consumers are going to get screwed notwithstanding, because insurance companies are going to barter between themselves and

resolve issues of fault even when a person may not necessarily, de facto, be at fault.

We know that the Liberals in Quebec maintain a public system. The Liberal government there maintains and sustains a public system. The Social Credit Party in British Columbia maintains a public system. The position that we hold, I should tell you, is that everybody who is injured in an accident, whether at fault or not, deserves speedy compensation of lost wages, speedy provision of medical benefits and of rehabilitative programs.

But we also believe that everybody who is an innocent victim deserves to be compensated for the pain and suffering and the loss of enjoyment of life and has the right to go to a courtroom, if need be. We know that only a very small percentage have to end up in courtrooms, but they have that right to use a courtroom to resolve differences that they may have with the drunk driver, the careless driver or the negligent driver.

The impact of this legislation is to take away that right and to make sure that, rather than being paid out in compensation, those millions and millions of dollars are going to be converted into profits for the auto insurance industry. Really, the most fundamental thing that can be done in this province is the easiest thing—one the Liberals and the government have refused to do—and that is to ensure that people who are licensed are properly trained and capable of operating motor vehicles.

We have done nothing fundamental in this province about changing the standards for new drivers in the last 40 years. The Liberals have been reminded time and time again of the need to upgrade the standards for new drivers and they refuse to do a single thing about it, notwithstanding that it could be done in a matter of days through regulatory powers. That, I am sure, you are very familiar with by virtue of your experience.

The Chair: Thank you for your presentation. I appreciate your—

Mr Kormos: You are welcome.

The Chair: I was talking to the presenter but, as always, Mr Kormos, we are very thankful for your presentation.

From the Ontario Safety League, Mr Pitts. The clerk is distributing the Ontario Safety League's presentation. I would suggest, if you could—you have half an hour—take 15 minutes to go through it and if you can, allow 15 minutes for some questions, comments and discussion.

ONTARIO SAFETY LEAGUE

Mr Pitts: I thank you for the opportunity to address your committee in its very important work related to Bill 68. Let me take just a moment to review the objects of the Ontario Safety League of which I am the president and general manager, in other words, the salaried chief operating officer.

The league is a 76-year-old, independent, nonprofit, nonsectarian, nonpolitical charitable organization governed by a 24-member volunteer board of directors. Its motto is "Safety through education" and its objects include: helping the people of Ontario protect themselves from accidental death and injury; co-operating with public and private organizations to advance the cause of safety; conducting a continuous program of public information and education aimed at reducing or eliminating the causes of accidents, and co-operating with local safety councils so that they might better serve their communities.

The Ontario Safety League generates about 90 per cent of its revenue through the sale of its services and materials. Less than 10 per cent comes from grants and donations. Almost all of our sales are related to driver education or fleet management at one level or another. The main focus of the league's activities, therefore, is highway or traffic safety. Our aim is reducing the terrible toll taken by road accidents.

In 1987, there were 1,228 killed and 121,000-plus injured in this province. It is estimated that there are about 6,000 people on any given day in hospital receiving treatment as a result of vehicle accidents. That is 30 200-bed hospitals worth. The dollar cost of road accidents is staggering and very costly economically and socially.

It is in this vehicle accident reduction connection that I appear before you today. In reality, it is the cost of these accidents that has established, and will continue to dictate, what insurance will cost the drivers and the people of Ontario. If the accident rate and severity can be reduced, so will all related costs. It is to the prevention of accidents that efforts should be directed if we are going to curb or cut costs and suffering.

1540

In introducing the legislation in the provincial Legislature, the Minister of Financial Institutions (Mr Elston) referred to the act as being part of a comprehensive plan. That plan addressed a reformed insurance system and a number of other initiatives to mitigate "the underlying causes of higher insurance rates," that is to say, "accidents and injuries on our roads." The reform package

includes strong deterrents to bad driving and new measures to reduce accidents and improve highway safety.

Certain of the measures have been put in place by regulation and, to a large degree, form the deterrent part of the plan. These include increased fines for speeding and traffic offences, increased enforcement capability by police, public education regarding seatbelt use and daytime running lights.

The Ontario Safety League welcomes and endorses these measures as a means of reducing accidents or their severity. However, it is to two other aspects mentioned by the minister that we would recommend immediate attention, and they are: driver safety promotion in the workplace and drunk driver repeat offenders seeking treatment before licence reinstatement.

Looking at both these issues, one could say generally that driver safety promotion should be done everywhere, including the workplace. Resources for this have not been identified, to my knowledge. This could fall into the private sector as well as the government, but incentives should be established.

For years, the insurance industry has been granting premium discounts for validated initial driver training. This was to continue to be the case under the rate-setting proposals of the Ontario Automobile Insurance Board before its work was curtailed. The incentives were to apply to both drivers of passenger cars and riders of motorcycles, provided a stipulated and agreed level of professionally delivered, basic standard of training was successfully achieved. The standards were based on the Ontario Safety League high school driver education curriculum and, in the case of motorcycle training, on the Ontario Safety League supervised Canada Safety Council course.

Under this new act, the commission has the duty to set rates in relation to class of risk exposure. It must therefore be accepted that safety promotion in the workplace, and in the public generally, can be greatly advanced through recognition of incentives for individuals who avail themselves of driver or rider education courses. It follows that some incentives should also be seriously considered for those more experienced drivers who take recognized safety-enhancing courses later in their driving careers. Every road user would benefit and accident loss is reduced, if education is used to change driving attitudes whereby the effects of congestion, reaction times, weather, speed, sobriety and courtesy are in play.

It is known that impaired driving is a major factor in the cause of accidents. Alcohol was reported as a factor in nearly 41 per cent of drivers killed in Ontario in 1987. This is a slightly lower rate than a few preceding years and probably is due to a number of factors, among them, education and enforcement. The sad fact is that the percentage of hard-core driver-drinkers, those having higher blood alcohol rates that occur in accidents, really has not gone down. This suggests that those with a drinking problem are more likely to be involved. Repeat offenders constitute a greater risk to the public as these tend to fall into the hard-core group.

If we accept any drunk driving offence as the basis for reinstatement of a driving licence, it should be limited to one and one offence only. After a first impaired driving offence, counselling and proof of rehabilitation should be required for licence reinstatement. A second guilty finding on a similar offence should result in a revocation of driving privileges for a long period of time, possibly permanently.

This approach to drunk driving falls into the aspect of the act as to who is entitled to benefits under no-fault. Our approach would be that if a driver is guilty of impaired driving and causes an accident, income benefits would be withheld or very drastically reduced.

In conclusion, there was a suggestion that under a no-fault insurance scheme, accident rates would increase. It behooves the insurance commission to reverse that trend by establishing incentives for better education and by deterring drinking drivers.

Mr Runciman: Thank you for appearing before the committee today. I find it a rather curious presentation, though. I see on the one hand you are here expressing concerns about highway traffic safety, but at the same time you seem to be endorsing this no-fault initiative. Is that indeed what you are doing, endorsing Bill 68?

Mr Pitts: No, I am not endorsing a no-fault initiative. In the act as it presently appears, I am trying to draw attention to the value of driver education as one of those things which should be taken into account by the commission in reducing accident rates and in being very severe, whatever system is in place, with punishment of drinking and driving, particularly repeat offenders.

Mr Runciman: I appreciate that, but I guess what I find a wee bit curious about this is the fact that in your last paragraph you say, "It behooves the insurance commission to reverse that trend," etc. It seems to me that if indeed you have taken a

look at the impact of no-fault on highway safety and accident frequency, it behooves your organization to take a strong stand, at least expressing concern and demanding of the government comparative studies in jurisdictions that have gone the no-fault route to clearly indicate to us, the consumers and drivers of this province, what the impact is going to be and has been in those jurisdictions in respect to highway traffic accident frequency.

I am somewhat disappointed, to say the least, if your presentation in essence is simply dealing with some stronger measures that you would like to see and I am sure all of us would like to see—most of us, in any event. In my view anyway, it should be incumbent upon your organization to take a much more critical look at no-fault and what its overall impact is going to be.

Mr Pitts: The position of the league, as I think I mentioned in my introduction, is safety through education. What we are trying to do, of course, is establish that education, in this ever-increasing traffic environment that drivers are operating in, would serve a purpose to reduce accident occurrence.

In reality, it would do so no matter what insurance scheme was in place. I felt that my coming here to reiterate what I am sure has been put before the committee by a number of other organizations in terms of—

Mr Runciman: Not comparable to yours, no.

Mr Pitts: Pardon me?

Mr Runciman: Not comparable to yours in essence, in my view, but I appreciate your input.

Ms Oddie Munro: I am interested in your concerns about driver safety in the workplace. I believe there probably is some jurisdictional quandary here, and it would be interesting to have the statistics, because I am sure that every worker-management committee on a health and safety committee is concerned with safety as it relates to driving on private property and that indeed the Workers' Compensation Board system has some means of fault deterrence through its sanctions on drivers who are using the public highways as their workplace.

I am wondering how the safety league or whether it is possible that the safety league, and I am sure our Ministry of Transportation is looking into it—have you gone to the industries in the province who would have significant highway or track facilities—I am thinking of Stelco or Dofasco—to input your concerns? That is private.

I believe the roadways are private; I do not know about the track.

Mr Pitts: I do not understand which track you are talking about; I am sorry.

1550

Ms Oddie Munro: Certainly the railway tracks going through such major labour—or at least companies such as Stelco and Dofasco; I am not sure where the jurisdiction is there, but certainly the private roads in major workspaces such as those companies. Do you sit on any of the advisory committees today, the Industrial Accident Prevention Association, for example, or have you been asked for assistance in any capacity on the joint labour-management committees dealing with safety?

Mr Pitts: No.

Ms Oddie Munro: I think that might be something you could do. Certainly there are all sorts of implications for what we could do interministerially.

Mr Pitts: The Ontario Safety League is primarily involved in the training of individual drivers for passenger cars. We train fleet managers, that is, driver supervisors, in certain skills such as accident investigation and the management of fleets and teaching them how to teach other drivers, but as to the jurisdictional areas you are talking about, in terms of regulating use of roadways within private property, we are not involved in that.

Ms Oddie Munro: But if we are looking at the relationship of safety in the workplace, I cannot think of any—you could probably point out some to me, but the labour-management committees themselves are very concerned with safety. I guess you raised a flag for me as to what we could do to recognize their efforts and get statistics that would speak to whether or not there is a job being done or a job that needs to be done.

Mr Pitts: We have a number of companies that associate themselves with our safe driver award scheme, of which there are 15,000 in this province alone; that is, 15,000 drivers. About 300 companies are associated with us. There are a large number of companies outside our group that associate with the Ontario Trucking Association or the Motor Vehicle Safety Association, so the jurisdiction is split.

Mr Velshi: I am inclined to agree with just about everything you have said in your brief here—I think it is an excellent brief—except for one little thing. You said our approach would be that if a driver is guilty of impaired driving and causes an accident, income benefits should be

withheld or drastically reduced. I want to hear a comment on that, because although we find the driver is impaired and has caused an accident, there are family members who are innocent victims of that also. Part of the reason we are offering no-fault insurance is so that anybody who is not at fault has some benefits. Although we agree that the impaired driver should not even be on the road, the fact is that driver is there and has caused a problem, not only for the other party but also the family.

Mr Pitts: In an attempt to be brief here, perhaps I have condensed that thought a little too much. What I meant was that I felt that once a person was convicted of drunk driving he really would not be entitled to his income supplement—in other words, it would be part of the deterrent, if you will—or his income benefits. Obviously the health benefits and care of him or the injured party and so on would go on undisturbed, but for him to expect some income benefits, I agree there would be family concerns here but I do feel that if there is an out-and-out case of impaired driving with guilt established, the benefits could be—"withheld" is perhaps the wrong word; I guess "withdrawn" or "recovered" is a better word, in due course.

Mr Velshi: I do not agree with that, but I agree with you that this driver should not even be on the road if there is some way of getting that driver off the road.

Mr Kormos: One of the criticisms about this scheme is that drunk drivers are going to be treated the same as everybody else. Let's make something perfectly clear and that is to say that the government very politically said, "Okay, then we won't give drunk drivers income replacement." Mind you, only 80 per cent of their income and only up to a maximum of \$450 is the income replacement we are talking about here. But then it was pointed out to the government: "What gives here? You have to operate with the presumption of innocence." That is a common principle and very important to a whole lot of us here in this country. The government said, "Quite right. What that means is we will provide income replacement to drunk drivers up and until that point in time when they are convicted of drunk driving."

I can tell you this: there will not be a lawyer in town—not just here in Toronto, but in Thunder Bay, Sudbury, Welland, Thorold, Hamilton—who when he or she has a drunk driver who has been injured will plead that drunk driver guilty. There will not be a lawyer in town who will not delay that trial as long as humanly possible, and

for some lawyers as long as extrahumanly possible. The government has a crisis on its hands right now with clogged courts, right?

Mr Pitts: Yes.

Mr Kormos: Cases are being tossed out left and right. Drug traffickers are walking the streets, not because they are innocent but because the government does not provide enough courtroom space or enough judges to hear the trials. What the government is doing, the sleight of hand here is really not that sophisticated. They are beginning to fumble and they are dropping the balls. Do you know what I mean? The fact is that their little approach vis-à-vis drunk drivers is the most inherently contradictory approach that anybody ever heard.

They are going to generate delays in trials for persons charged with impaired driving. In those instances where those persons would by virtue of the delay become entitled to their so-called no-fault benefits, the wage replacement, they are going to create incredible delays. They are going to create clogs in the court system. What is going to happen is that their original promise that drunk drivers will not be compensated for lost wages is going to become the most hollow promise that has ever been made.

I wonder if you would comment on this. The government has done nothing—we have talked about this with some of the other people—about increasing the standards for new drivers. It is a joke in this province when it comes down to getting a driver's licence. You are unleashed on to highways with powerful bits of machinery.

I understand it has been a good 40 years since anything significant has been done about driver training and the standards required of new drivers. The government appears to have been grossly negligent in this area. They have received so much input. People such as John Bates from People to Reduce Impaired Driving Everywhere have given them so much input. They could in a matter of days, through regulation, increase the standards for new drivers. It seems to me that would save a whole lot of lives and a whole lot of bodily injury, if we only improved driver training. Why do you think the government has refused to do that?

Mr Pitts: Driver training is one of those things that are voluntary, unlike in some other jurisdictions where driver training is mandatory. Okay?

Mr Kormos: Dead on.

Mr Pitts: In the first place there are roughly 200,000 new drivers licensed each year. About 100,000, as far as we can determine, get some

form of driver training. The other 100,000 get it from Uncle Bill or Cousin Bob or someone. I do not know where it comes from. Really I guess we are talking about one half of the annual new driver licence batch, if you will. We are talking about those who receive training. To say that there has been no upgrading in 40 years might be a slight simplification, but in reality—

Mr Kormos: But I have to make it simple for these guys. You have to understand that. Okay?

Mr Pitts: Okay. But in reality the course that is delivered to those 100,000 is a course that was approved by the ministry in about 1970.

Mr Kormos: Wow.

Mr Pitts: It is basically a very sound course, provided it is given and delivered by qualified individuals.

Mr Kormos: We test these new drivers on plaza parking lots.

Mr Pitts: In some jurisdictions. But in fact in a lot of places in Ontario they are taken out on proper roadways, thoroughfares and the rest of it. There is one centre up here which I think you are referring to.

The Chair: Thank you for your presentation. We appreciate it.

Just for the benefit of the female members of the committee, I am sure, when you used “guys” generically you were implying male and female.

Mr Kormos: Oh, yes. Far be it, once again, for me—

The Chair: From Progressive Rehabilitation Consultants Inc, Ann MacIntyre. Her presentation was in the package, the brown envelope you received when you came this afternoon. It should be in there. It is marked exhibit item 60. Could you just give the committee a minute to find it. If, for the next half an hour, you could divide the time, 15 minutes for presentation and 15 minutes for some questions and comments, it would be appropriate. Proceed.

1600

PROGRESSIVE REHABILITATION CONSULTANTS INC

Ms MacIntyre: I thank the committee for allowing me this time today to express our concerns regarding the Ontario motorist protection plan. The focus of this presentation will be on the rehabilitation section of the proposed legislation.

I have worked for 18 years in Ontario as a rehabilitation counsellor with the emphasis of my work being vocational rehabilitation. Nine of

these years were with the Ministry of Community and Social Services vocational rehabilitation services, and nine years have been in the private sector working with both lawyers and insurance companies for those injured in motor vehicle accidents.

I speak on behalf of all the rehabilitation counsellors who work or who have worked with me and my company, Progressive Rehabilitation Consultants, and for the vocational rehabilitation counsellors with the Ministry of Community and Social Services, who by virtue of their position as civil servants are prevented from making public criticism of government policy but who have discussed their concerns with me.

I preface my criticism of this bill by stating that when I refer to the insurance companies or the insurance industry I keep in mind that we have had the opportunity to work with insurance adjusters who are concerned, compassionate and eager to provide the rehabilitation services available, but who are limited from providing the services in their communities by decisions or policies made in corporate head offices over which they have no control.

These insurance adjusters have been most helpful in assisting us to understand the environment wherein they work and have encouraged us to express our concerns in regard to rehabilitation in the proposed legislation, as our concerns are shared by many of them.

The first major concern is that there is no definition of “rehabilitation” in the proposed legislation to serve as a guide for the insurance company, rehabilitation counsellor or consumer in determining the level of services to be provided.

Past experience has been that insurance companies consider that rehabilitation consists of finding an injured person any job. Consideration of the income level of the job, the future security in the job or the individual’s satisfaction with the job have not been criteria. Nor have they had to ensure that a person actually finds a job; it need only be shown that a person could do any job to be terminated from benefits.

Under the present system it is the responsibility of the first-party insurer to provide rehabilitation benefits. Their prime motivation when these benefits were provided was to eliminate the weekly payment of \$140 as quickly as possible. We would suggest that this was one of the major reasons the cost of settling claims escalated, as the insurance industry failed to provide suitable rehabilitation to assist injured parties to regain employment near the economic level of their

pre-accident employment, and thus increased payments for future economic loss in settlements.

Injured parties were increasingly forced to seek the services of lawyers to protect and to gain the benefits available in the policies they had purchased from insurance companies. The lack of definition of "rehabilitation" is a critical error in the proposed legislation, as all rehabilitation services now become immediately predicated on the insurance industry's definition of "rehabilitation."

It has been made clear in all insurance presentations to this committee that the industry is trying to reduce its costs. It is naïve and dangerous to assume the insurance companies will now be generous in providing meaningful rehabilitation, particularly in the area of vocational rehabilitation, to those who are injured in a motor vehicle accident. With the proposed increase in weekly benefits to \$450 per week, they will be even more zealous to define any employment as being suitable in order to terminate the payment.

Under the present system the lawyer has been instrumental in ensuring that the injured person received the services that were appropriate to his situation and that he recovered the economic losses that resulted from the injury. Under the proposed system there will be no present advocate for the client.

While a government commission is being proposed to protect the consumer and ensure that the insurance benefits are paid in the future, we would suggest that this commission will shortly be overrun with complaints and that injured parties will now be as frustrated as they have been in the past, only this time they will await a government decision rather than an insurance company decision. This also means that the taxpayers will be funding another and unnecessary government bureaucracy.

We believe that the increase in the amount of rehabilitation benefits available is an illusion designed to make this proposal marketable to the taxpayer. We support the need to increase benefits to specific groups of injured individuals where it has been established that the cost of rehabilitation exceeds \$25,000. In most cases, however, \$25,000 with a well-planned rehabilitation program is sufficient. It does not matter how much could be paid; what is important is how much will be paid and how efficient and effective these payments will be in assisting the injured person.

Rehabilitation has become one of the most rapid growth industries in this province in the last few years. However, in Ontario there are no professional standards or regulating body as to the qualifications, professional standards or ethics for those who call themselves rehabilitation counsellors, consultants or case workers. There are no regulations or standards as to the services provided by private clinics selling rehabilitation.

Until standards are established to place the responsibility for the purchase and provision of rehabilitation, which is fundamentally in the hands of the insurance industry, it will continue to erode the health care services of this province. It provides for insurance companies to purchase services from individuals or clients who lack the education, training or experience to objectively evaluate and thoroughly define the areas that may require treatment through a rehabilitation program. They will purchase the services that will supply them with the answers they want, quick answers to complex questions. On this information, major decisions affecting injured persons and their families will be made.

Members of health care professions such as doctors, physiotherapists, psychologists, social workers and occupational therapists have been increasingly concerned by the flooding of the market by rehabilitation personnel who do not meet professional standards of performance. Rehabilitation companies used by insurance companies are frequently now large business corporations, which like the insurance companies are motivated by profits, not by the services provided to the consumer. Contracts for service are negotiated at the head office level through advertising and marketing with the quantity of referrals at the cheapest price being the focus rather than the quality of the services provided.

Some rehabilitation companies are extensions of insurance companies or insurance companies create their own units to provide the rehabilitation. Under the present system, the lawyer can be instrumental in ensuring that the qualifications and the standards of the rehabilitation counsellor or those resources used meet professional standards.

The implication made in the presentation of this proposal to the public, both by the insurance industry and the government, is that by increasing rehabilitation benefits they are ensuring that the people of this province, who have a car accident and are unable to return to their employment, will be provided with the necessary

services through rehabilitation to allow them to return to other employment. This position demonstrates a lack of understanding of rehabilitation, particularly as it pertains to vocational rehabilitation, and a lack of recognition of the realities of employment.

Successful rehabilitation to employment is related to a number of factors such as age, education, work history, the availability of jobs in a given area or the individual's ability to move to another area where jobs may be available.

Physical limitation is but one factor to be considered when discussing vocational rehabilitation. For example, injured persons who are older workers have pre-existing disabilities, live in rural areas or small communities, have any difficulty with the English language or live in areas where unemployment is high or rehabilitation resources are lacking may not find employment in spite of rehabilitation. As a result of an accident, unemployment may become a permanent reality even though the injuries may not be catastrophic.

1610

Under the present system an individual has the right to go to court and present all the factors which relate to the situation and receive an appropriate judgement. Under the proposed legislation an individual would be deemed employable based on physical grounds alone and terminated from insurance benefits. We believe that the litigation process has been important in educating that disability is not a one-dimensional problem assessed by physical measurement alone but is the result of a complex number of variables.

The court system has allowed for the consideration of all factors which affect employability and decided on compensation for unemployment triggered by a motor vehicle accident. While most individuals can be rehabilitated with the necessary time, resources and labour market conditions, to suggest that rehabilitation is a solution to the problem is misleading and false. People who become unemployed due to a motor vehicle accident and unable to find alternative employment will now become economically dependent on the state.

Additionally we point out that, in the case of dispute, rehabilitation benefits, except those that are essentially medical expenses, are not payable pending resolution of the dispute. We suggest that this defect in the proposed legislation will cause delay and, in some cases, the denial of services to the injured person. The reports of rehabilitation consultants by law are the property

of the retaining party, be it an insurance company or lawyer. Thus, it may not be possible for a rehabilitation counsellor to compile and send the necessary documentation or meet with the insurer's doctor to quickly gain the necessary approval as required under the proposed legislation.

In summary then, we suggest that this proposed legislation is inadequate to address the problem of the rising cost of insurance premiums. It will mean that those who can afford additional insurance will be able to protect themselves to a limited degree. Those who are vulnerable or who may become vulnerable in the employment market owing to an injury will not have ready recourse through the law to address their situation. Those taxpayers in Ontario who do not drive will be paying through increased tax dollars for this legislation.

We suggest that the Osborne report more clearly defined the problem of increased court settlements by placing the responsibility for this in the hands of both the insurance companies and the legal system, and it proposed changes to make the present system more efficient, effective and economical.

To suggest that rehabilitation, as outlined in this legislation, is a solution is idealistic. Without a definition of rehabilitation, without standards of professional competence and without a recognition of the limitation of rehabilitation, many people in this province will suffer economic loss as a result of a motor vehicle accident.

It is unrealistic to believe that the insurance industry and its corporate head office will change its focus from reducing expenses and increasing profits to the benefit of the injured motorists in this province.

Ms Oddie Munro: I wonder if I can have some clarification on page 2 of the statement, "In case of dispute the rehabilitation recommendations are not immediately payable under the proposed act." I thought the rehab benefits would flow regardless of threshold or dispute.

Mr Ferraro: The presenter is technically correct, in that if the insurance company deems the rehabilitation unwarranted, then it can ask for mediation and subsequent to that it can go to arbitration, or the courts quite frankly. I should point out, however, that there is a penalty, as I have indicated on a previous occasion, for the insurance companies that arbitrarily try to use this format as a way of getting out of making payments.

It would fly in the face, quite frankly, of what we are trying to accomplish here, mindful of the

fact that insurance companies have not been lily-white in the past, as Mr Kormos would agree. Dealing on a first-party basis now, it is inherent, in my view, for the insurance company, through the respective underwriter, to treat its client in a much more acceptable fashion. We do not anticipate a large number of these claims happening. Certainly, if we do, the insurance commission is empowered to deal with it.

Ms Oddie Munro: My question then is, in terms of the rehab process itself and the input or teamwork by rehab people, psychologists and a number of other professionals, are you saying that the abuse would be endemic to the whole procedure or that it would be most readily observable in the placing of that injured person back into the workforce or into a comparable level of employment?

Ms MacIntyre: I think the problem is in the role of the rehabilitation consultants when they go into a situation. They make choices about what type of information they are going to compile and how they are going to assess the problem.

I think a good illustration would be that you can go into a family situation and if you have the background and training and realize that you may be dealing with some marital problems, you then make recommendations to an insurance company as to who you feel would be the appropriate person to define that problem, ie, I might wish to send him to a psychologist or a social worker.

The problem I see with this act is that, number one, as I pointed out, there are a great many unqualified rehabilitation people who work for insurance companies who do not know the problems nor do they look for the problems or seek out the documentation to support the problems.

The second phase of it is the type of treatment that person gets. Is my job to get this person back to any employment or is it to maximize? It may cost more dollars in the beginning to get this person back to a working situation comparable to the level he was at pre-accident. It has been my experience, and I see no reason why it should change, that under the first-party, it was not the insurance industry's responsibility to return the person to a pre-accident level. That is what the court settlement was for, to determine the dollar or economic loss for that person. I do not think that suggesting bringing it to the first-party system is going to change that.

It then becomes their saying, "Could this person not work at such and such?" and many times you would have to say, "Yes, they could

work at that, but that is not going to give them security in the job market and it is not going to give them future opportunities." It is not a simple matter of finding a person a job; it is a far more complex thing. So I see the problem in the beginning in terms of who does the assessment. Is the insurance going to pay for a competent social worker to define marital problems? I would suggest not.

Ms Oddie Munro: Recognizing that the current system has all sorts of loopholes, do you think that the advisory team, in the judgement of the severity of the claim, is now accepted. At least we had some movement on the fact that the insurance company would recognize various players in the rehabilitation process. Do you not feel that the body of knowledge that comes out of those judgements could be used to the benefit of appropriate or long-term placement?

Second, the dispute resolution mechanism is another avenue by which, supposedly, professionals could make their voices known. I am recognizing that that is not the case right now, and that is why I am saying it is something that could be put into place by process.

Ms MacIntyre: In response to your first question, I was quite surprised to learn, and I have been working in the private sector for nine years, that many of these people under the previous system could have laid complaints to the superintendent of insurance. I happen to have had occasion to meet him at a conference in Toronto and he pointed out to me that they virtually never received complaints, I think because it is one thing to theoretically have a process and it is another for the consumer to know and to expediently get through that process.

I suggest that when a person has an accident, if the insurance adjuster does not choose to provide him with the full information to ensure that he knows what his options are, it does not matter what process may be in place. It is accessing the process that I think is important. Most of us with experience with government know that it does not move quickly. While the commission may develop a body of knowledge, how long will it be before there is sufficient to recognize that there is a problem?

1620

Mr Runciman: I do not have your written presentation. I am just trying to recall, in the opening of your comments you made some reference to the government employees involved in the rehab side of things who have much the same concerns as you have expressed here today

but are prohibited from publicly expressing them. I wonder if you could give us a little more detail in respect to that element.

Ms MacIntyre: I think some of the concerns are, and I do not have my piece of legislation right here, for example, there is a phrase that says that you must use all other insurance policies—and I know that many people have referred to this and one of the final statements—that are available to you “or law.” Maybe the parliamentary assistant can—

Mr Ferraro: I am sorry. I was getting another point clarified.

Ms MacIntyre: What we read in the act from a vocational point of view is that you use all the other mechanisms available to you before the insurance company must move. I think one of the concerns that has been expressed is this phrase “or law.” It has not been uncommon for rehab people to send people to the vocational rehabilitation services or to Canada Manpower programs. Instead of providing the service or requesting that the insurance company pay for those, they have used public services. Right now in the province of Ontario there is, I believe, a two-year waiting list if you live in Sault Ste Marie, four months in Hamilton, a year in the peninsula, to get those services. Their concern is that there may be an increase of referrals.

Mr Runciman: What you are saying too is that most of the benefits that the government has been blowing its own horn about, the \$25,000 up to \$500,000 for example, are essentially illusory. I think you are not the first witness who has said this, but the \$25,000 figure is probably adequate in most instances, so that drawing down \$500,000 is going to be highly unlikely in the overwhelming majority of cases. This is another part of the government’s con job in attempting to convince the public that it is increasing benefits when, in effect, it is not having any meaningful impact in that respect and in fact it is reducing opportunities and benefits for the people that you are here representing.

Do you have any concerns—I think this has been expressed by others as well—about the increased institutionalization? This may have more to do with victims of head injuries, etc. In terms of rehabilitation, do you have that concern as well? I do not know if you mentioned it; I do not recall it. The comment has been made that we may see more and more people becoming institutionalized as a result of this legislation.

Ms MacIntyre: I can reply to that as a member of the Head Injury Association in Hamilton. We

have certainly been aware of the cost of maintaining people in their homes, and I think \$1,500 per month maximum can only suggest we are not going to be able to maintain many people in their homes, be they head-injured or quadriplegics or people who need health care. I think it is unrealistic to expect it. It works out to \$50 a day, and that is usually one hour of professional service.

Mr Runciman: I was just thinking about the impact on a number of people in respect to the client group you are representing here. Would they be satisfied with simply some sort of a softening of the threshold or are they essentially concerned about the bill as a whole? Would a softening of the threshold to make piercing the threshold much easier for your client group be satisfactory?

Ms MacIntyre: We are more concerned about what our knowledge is of rehabilitation and how it has functioned within the insurance industry in the past and how it is going to function in the future. It is easy to focus sometimes on the extreme cases that are going to come in that threshold. What we are referring to are many of what would be called common injuries—neck injuries, back injuries—and the decisions that are made around the rehabilitation of those people.

I would like to use the example of a young person who, because of an injury, is going to be vulnerable on the market. I am not convinced that the insurance companies have shown they would be willing to engage in three years of formalized training, for example, to assure that person security on the market or ensure that he is going to get a decent wage in the future. It has been my experience, and that of those I work with, that the tendency is to find him a job.

Mr J. B. Nixon: Mr Runciman talked about the government’s con job on the \$25,000. I have always understood the increase in the medical and the rehabilitation benefits to include such things as retrofitting a home, which would be significantly more than \$25,000 in many, if not all, cases, or the purchase of an electric wheelchair. All those things are well beyond \$25,000, or certainly when added together exceed \$25,000, so I am not sure how you could agree that \$25,000 would be sufficient.

Ms MacIntyre: I can only agree that in nine years of doing this work, I think of three cases I worked with where we went over the \$25,000. Again, I think what you are forgetting is that most people do not fit into a rehabilitation requirement of modification of their home and purchase of expensive equipment and health

care. We are talking about the 40-year-old man who was working at Stelco, say, and injures his back and is unable to return to Stelco.

Mr J. B. Nixon: But would you not agree that most people do not have traffic accidents?

Ms MacIntyre: Most people, I think, have accidents. Whether we all get them reported and it becomes part of the system—

Mr J. B. Nixon: But where there is a physical injury.

Ms MacIntyre: I do not know the statistic on that.

Mr J. B. Nixon: It is only about one per cent.

The Chair: I am going to interrupt here. Mr Ferraro, you had a point of clarification.

Mr Ferraro: I will try to be brief. I would just point out to Ms MacIntyre that under the rehabilitative services offered, in the regulations you will see that we have expanded those services eligible now for rehabilitative funding, if you will. That is one point I would like to make.

The other point I would like to make is that unlike the present system, where if I was injured the insurance company would ask that its physician look at me to determine whether or not I needed a certain service, the new legislation indicates that the insured's medical adviser, which is a little broader definition than "physician," now makes that determination. So now the medical adviser of the insured, the person who pays for the premium, will make the determination of whether or not the individual should get rehabilitative services or long-term or supplementary health care.

If, indeed, the insurance company requests, as you indicated correctly, then it can contest that through the normal course of events, bearing in mind there are penalties if it is frivolous.

Ms MacIntyre: I would just like to point out that the rehabilitation benefits were available under the previous act. I think that is important.

Mr Ferraro: I am just saying there is an expansion.

Ms MacIntyre: The way I read the old act, I do not think there is anything I can do under this act that was not available under the other, if the insurance companies had fulfilled the requirements.

I think the second thing is that it has been very common practice to send people for an independent medical in order to delay the provision of services. I would suggest that from a rehab point of view that is still there, it will still be used and it

is a major concern for us in the area of rehabilitation, because school programs begin at certain times, certain programs in rehabilitation have to be co-ordinated and there are delays in trying to get a doctor, to get an independent medical. It does not happen tomorrow.

I do not see that either of those points is changed to the benefit of anybody in this process.

The Chair: Maybe we have an extra copy of the new regulations that Mr Ferraro was referring to that we could leave with you.

Mr Kormos: Premier Peterson lied like Ananias in September.

The Chair: Mr Kormos, in terms of parliamentary language, maybe "misled" or whatever, but "lied" is awfully strong. We are still an extension of the House, and if we could stick to parliamentary language I would appreciate it.

1630

Mr Kormos: Premier Peterson is a menteur à triple étage. He demonstrated that back in September 1987 when he was grossly dishonest because he told the people in Ontario, "I have a very specific plan to reduce auto insurance premiums." What happens next? Is one lie sufficient? No, the lies are compounded because now, like pitchmen at a second-rate carnival, you have government members out here telling people less than the truth about the \$500,000 in long-term care that is available at the rate of \$1,500 a month. My goodness.

You have indicated to us, and I will tell you a whole lot of other witnesses have indicated to us, that is going to make victims be victims twice: once at the hand at the drunk, negligent, careless or reckless driver who cripples them, and they are going to be victimized a second time by government and by an insurance industry that forces them into shabby institutions because \$1,500 a month buys little more.

We are told that the amount of money available for rehabilitative benefits has been increased to \$500,000, yet you and any number of other very competent witnesses—front-line workers, people who deal with this type of scenario on a daily basis as a part of their work—have indicated to us—you today, and all last week—that it is a rare day and a rare victim who uses more than \$25,000 of rehabilitative care.

Especially now that OHIP is funded in the manner that it is out of tax revenues, and OHIP is universal in this province—that is something we have sought for a long, long time, not the type of parasitic taxation that is going on to purportedly

fund it now—what we are going to see is perhaps the most heavily public subsidized private auto insurance industry in the whole world because we have private corporate auto insurance companies here in Ontario that are going to be making hundreds of millions of dollars in new profits and they are going to be subsidized by taxpayers and by victims of drunk drivers, of careless drivers and of negligent drivers.

It is one thing to be lied to by your Premier and by his government members; it is another thing to see people so deserving of much better—victims of negligent, drunk, careless and reckless drivers—be treated so shabbily. We are creating Dickensian institutions for these sad people who deserve far more and who, among other things, deserve real and adequate opportunities for recovery and for lifelong care when it is needed.

Thank you for coming today.

The Chair: That was more a comment than a question. Thank you for your presentation.

From Donald R. Anderson Associates Ltd, Donald Anderson. Again, I would just take some pains to remind the committee that we are an extension of the House and as such I would ask the committee members to try to maintain some decorum with respect to unparliamentary language. I would appreciate it.

Mr Anderson, for the next half hour we are yours. I would suggest, if possible, 15 minutes for your presentation, allowing 15 minutes for some discussion, questions and comments.

DONALD R. ANDERSON
ASSOCIATES LTD

Mr Anderson: Okay. I really want to thank this committee for hearing me today and giving me an opportunity to pass on to you some of my experience in the field in which I work. You have my brief. I am not going to read it to you; I am going to discuss its contents. I hope I will tell you something you have not heard from everybody else. If not, I will be surprised.

I am an actuary. I devote a good part of my time to dealing with motor vehicle claims. They come to me from lawyers representing either injured people or insurance companies. I do not make any distinction as to whether I work for plaintiffs or defendants. I do not make any difference in the kind of work I do, depending on who retains me, because I see my responsibility as being to the court itself in the sense that there is a chance that any case I work on will end up in court and anything I say has to be in that context.

I operate my own firm. I have done so for 20 years. I do not know whether you know what

actuaries are. Basically they are ordinarily the ghoulies of the insurance and pension industries. I have worked in both insurance and pension industries. Currently, most of my work is in the forensic or litigation field, not limited to motor vehicles accidents. I have been involved in aviation accidents, medical malpractice, division of pensions on divorce and a variety of other types of engagements.

I wanted to start off on a track that is perhaps not what you would have expected to hear from an actuary, but I tend to think in terms of basics. You have a problem with premium rates that people are not happy with. You have a problem with insurance companies that say they are not happy with what is going on.

At the root of the problem is the motor vehicle accident itself. If anything could be done to reduce the number of injuries and fatalities in motor vehicle accidents it would contribute to the solution to the problem, as I see it. I think that could be successfully disputed but I do not see us doing enough, in my view, to really attack that end of the problem.

The program proposes raising speeding fines, but I think there are a number of things that modern technology could contribute to the motor vehicle field to reduce accidents. If you are convicted of drunk driving and they take away your licence, the next day you can hop into a car and drive away. There is nothing stopping you, until you are caught again, because there is nothing in the car to stop an unlicensed driver from driving.

What if we just took our motor vehicle licences and turned them into what resembles the typical credit card with the magnetic strip along the back, put that in the slot in your car and it would not run unless you did that? You would have no unlicensed drivers on the road. It would be physically impossible.

Second, I think the biggest cause of carnage on the highways is alcoholism. If you could make it physically impossible to drive a car while the person sitting behind the wheel has alcohol on his breath, you would virtually eliminate it. What I am suggesting—inventors could work on this—is some sort of a device, a tube you would have to breathe into, and until you breathed into that and it registered safe, you could not start the car.

I was talking to a lawyer this afternoon and he said half of the cases he deals with—he is defending drunk drivers—are shaking drunk and a quarter have a real alcohol problem. I do not like driving on the road with those people next to me. I do not think any of you want to. But what are we

doing? We are not addressing it with modern technology.

I think also we could do a lot to educate the population better. When I was in France last July I was driving into Aix-en-Provence on a big superhighway. Beside the highway there were signs, "This is a test zone," and the markers on the pavement explained that unless you could see two markers between you and the car ahead of you, you were driving too close.

That is an educational function. It made me look and I said, "Yes. Okay. That is what they expect of me." I do not think it would change everybody, but it does express the expectation which I do not see observed; I see people tailgating me at about two feet back at 120 kilometres, expecting me to go up to what crazy speed they have in mind.

I would like to see our creative powers put on to the questions that really cause accidents. If you did that, I think you would have solved a lot of the problems of people being unhappy about premium rates on both sides of the quarrel.

I would like to turn to a subject that I am sure you have heard quite a bit about, which is just what the compensation scheme under Bill 68 is all about for personal injury. As I see it—and I may be wrong because I was not there—somebody took the two major studies that were done and asked, "What are we going to do? Let's take the minor accidents and pay for them with no-fault and for the major ones that are legitimate, let them carry on with what is going on now," which is a system involving hiring a lawyer, going and suing and eventually either getting it settled out of court or, in the rare case, going into court.

1640

That is the part of the business I am involved in personally. Lawyers come to me and give me the medical brief, the income tax returns of the person who has been injured and all sorts of other reports, discoveries and all that. I comb through it and say: "Okay. What would this person have done if he had not been injured? What was his occupation and what were its prospects? What is the actuarial present lump sum value of all the earnings he would have earned in his future?" assuming he cannot do anything.

Then I take a look at him in his medical state and try to figure out, is he capable of anything and, if so, what kind of occupation? I do research into occupations and figure out, if he cannot stand on his feet eight hours a day, are there any sitting jobs? If he cannot lift, are there jobs that require the pencil instead of the back? I talk to all

sorts of experts, doctors, rehabilitation consultants and pain management people and figure out what is possible and work out the present value of the income that could be expected.

If there is doubt as to what could be expected, sometimes I develop two pictures: one that may be an optimistic one and one that is pessimistic. I figure the optimistic one is the one the defence will like and the pessimistic one is the one the plaintiff's lawyer will like. I do not care who retains me, I go into that. I try to say: "You guys are \$150,000 apart between the optimistic and the pessimistic. You figure that out." It is a negotiation thing from that point on because when you go to court, it will be somewhere in between.

I think that is a system that has been painstakingly developed over the years. It is one of the most advanced in the world for trying to figure out a fair and just compensation. I have checked that out in other jurisdictions. I find we are in pretty good shape, even in comparison to Europe. I think that is what you sort of expect will continue with the serious accidents.

When I first saw the bill and saw it being reporting in the media, I said: "That's great. That's a good way of resolving this." But then when I started looking at how you would word it, I said, "Hey, wait. Maybe I can help you from my experience." To me what you are really talking about—in the wording of it, there is sort of an attempt to define what is serious, but in fact I think you have tried too hard. You have made a lot of people all upset. Lawyers are all screaming about this word and that word. There are sort of ideas built into it that I do not think relate to reality, as I see it in my practice. What you see in reality, the wording seems to eliminate people whose problems are psychological or related to pain, because it says, "physical in nature." I say: "You ought to sit down and talk to some of my clients. Their pain is very, very real and it hurts me to see them."

I have one client whose nerves were torn out from his spine and he is in tremendous pain and he bears it very bravely, but I do not think he is going to do much with his life from now on. He is 25. I am thinking of a woman who was really traumatized by the accident. She is from a good family. There is lots of money around. She would work if she could, but she is scared to sit in a car right now. She really is. I would almost call it phobic, and phobias are not all that easy to cure. You can tell a person to forget about what he fears and get behind a wheel, but it is not that easy.

The issue seems to be who can sue and who cannot. That is what I hear in the media: "Are you going to allow people to sue?" And if you are suing, you are thinking of lawyers and you are thinking of courts and you are thinking of some of the cases that have come out of the courts like the Brampton trail bike case where something seems to have gone awry and so on. I do not see it as a matter of being able to sue. I think it is really a matter of being able to get benefits, and if suing is the way to get benefits, okay, we are talking about suing, but there are better ways of resolving these matters.

In my brief I mention alternative dispute resolution, which I think our Attorney General (Mr Scott) has spoken of very favourably. It is where you get the parties together in an office and you have a mediation chairman or an alternative dispute resolution chairman and you try to narrow the areas of dispute and widen the areas of agreement and reach a resolution.

I think about 90 per cent to 95 per cent of the cases that get to court now could be resolved much faster, much cheaper, with much less stress and in privacy. Some of these people do not want their affairs dragged out into open court. I am thinking of people where it is kind of personal what has gone on with them.

I think that alternative dispute resolution, or ADR as it is now being called, is something that would be highly beneficial. So when I talk of traffic driving safety and ADR, there are two items there that could be very economical. Within that I think you could certainly afford the cost, if there is a cost, of allowing everybody to be treated fairly, as I think an ADR system would produce.

I would like to talk a bit about certain problem cases which maybe you had not thought of too carefully, or those who drafted the bill. I am thinking of the self-employed and the professionals and the young people. Bill 68 talks about the no-fault benefit being something for students, something for housewives, something for the aged and then 80 per cent, to a maximum of \$450.

I think basing a person's rights upon the the amount he was earning at the time of the accident can, in some cases, be quite inappropriate. I am thinking of a person who is just starting out his career. Let's say he is a law clerk and he is earning \$25,000 a year, but he will be earning \$50,000. Do you base his compensation on \$25,000 or \$50,000 or something in between? I would base it upon a curve going up from the \$25,000 to the \$50,000 and I would try to figure

out when he would reach \$30,000, \$35,000, \$40,000. I would take all that into account.

It is the same with a small businessman. If he has just started up his business and he is up to his ears in bank debt and overhead and he has not started making money and you base it upon the zero that his tax returns show, he is going to go bankrupt, and when he recovers from his disability, he is way behind the eight ball.

I do not know if you would like me to talk about the Brampton trail bike case. I was personally involved in it, but I might leave that to question period, because I have some thoughts on that that may be helpful.

The Chair: Thank you for your presentation. I have two questioners.

Mr McClelland: To be candid, I suppose mine is more by way of comment than questions.

First of all, thank you. You said at the outset of your comments that you hoped you would bring something to this committee that had not quite been heard before and I think you have accomplished that. I must say that some of your ideas are very provocative and interesting, to say the least, and I commend you for that. I want to say quite candidly and directly that I think it is that kind of challenge that we need to hear to expand our vision and to think more creatively. I just want to say that at the outset.

Some of your comments with respect to drinking and driving we have obviously heard before. At the risk of being accused by some of my colleagues of trying to blow our own horn, I think it is important to note that it has been a major undertaking of the government to increase Reduce Impaired Driving Everywhere programs and so forth, and grants have been made available for municipalities.

I did want to comment on one thing just by way of information to you. The standing committee on administration of justice will be considering alternative dispute resolution, beginning in early February. I know that you are self-employed, but at the risk of being presumptuous, I would say that we would very much be interested in hearing an expansion of your views on that matter before that committee if you felt that you could afford more of your time and input on that matter.

Mr Anderson: If I may interrupt, I have already written to Mr Scott on that one.

Mr McClelland: All right. Thank you. I just wanted to draw to your attention that we will be considering that in another committee.

You see a lot of injured people and deal with them. Again, it is almost by way of comment, but we had some comments today about how the

no-fault system may in fact dehumanize the injured party. I think you have summed it up so well when you say you have yet to meet an injured person who really wants to go to court.

A comment I wanted to make in response was that I have seen a tremendous dehumanizing process to people involved in the litigation system. I do not know whether you want to, but feel free if you want to expand on that at all. I think you have addressed that very well and very directly and I want to thank you for that.

Mr Anderson: I could expand on that, but I do not think the committee has the time to hear all I could say.

Mr McClelland: If you want to try a few comments, we would appreciate it.

The Chair: Okay. We have Mr Nixon and Ms Munro Oddie.

Mr J. B. Nixon: Mr Anderson, thanks for coming before the committee. You comment on the efficiencies and the benefits of an alternative dispute resolution mechanism in your brief. I just wondered if you were aware that there is an extensive system of mediation and arbitration to be established pursuant to this bill for resolving entitlement to no-fault benefits and so on and all those various questions.

Mr Anderson: I had read something about that. If you are doing what I am urging you to do, I am delighted. If it is along that line, I am delighted.

Mr J. B. Nixon: I think we are doing what you are urging us to do.

Mr Anderson: Fine. Then lend my voice in support.

Mr J. B. Nixon: Great. Thank you.

Ms Oddie Munro: That was my comment too. In the bill, on pages 35 to 39, we go through what they are calling the alternative dispute resolution. But you are saying it should be mandatory before you take it to court. Right?

Mr Anderson: I think so.

Ms Oddie Munro: Was that one of the intentions of the alternative dispute resolution mechanism?

Mr Ferraro: It is not mandatory but I cannot, quite frankly, see either party circumventing that. Why would you want to go to court if indeed resolution can be attained at a lesser level?

Mr Anderson: May I speak to that? I have talked about ADR with many lawyers and I say, "Why don't use ADR for this?" "Oh, I don't know," they say. "I don't know. This is a tried and true method." They are uneasy about it. You have to put a little bit of a squeeze on them, and maybe if that is what you are doing, that is the answer. They are used to court. They really are.

The Chair: Okay. Thank you very much. You did pose some different ideas with respect to starting a car in terms of the magnetic strip on a credit card or along those lines with the breathalyser. It is something the committee has heard with interest. Thank you for your presentation today.

Mr Anderson: It is a pleasure. Thank you.

The committee adjourned at 1655.

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Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Tuesday 16 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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Contents of the proceedings reported in this issue of Hansard appears at the back, together with a list of the members of the committee and other members and witnesses taking part.

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Tuesday 16 January 1990

The committee met at 1000 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and try to stick to our pattern of starting on time. I welcome, from the Toronto Insurance Conference, Robert Paterson, Joanne Brown and Douglas Jones. Perhaps you would like to come forward. I believe the clerk has distributed copies of your presentation. I would suggest we keep that to about 15 minutes. We have half an hour, but perhaps we can keep that to about 15 minutes and allow about 15 minutes for some comments, questions and discussions. The next half hour is yours. Please proceed.

TORONTO INSURANCE CONFERENCE

Mr D. W. Jones: My name is Douglas Jones. I am the president of the Toronto Insurance Conference. We are pretty well going to stick to our presentation, read through it and go through it and then I guess there will be a question period. We have enclosed a list of our member firms for information on the back of our proposal.

The Toronto Insurance Conference is a Toronto association representing 31 member companies of the insurance brokering industry. TIC members employ approximately 11 per cent of the registered insurance brokers in Ontario. The TIC is an official association established in 1918 and its directors are drawn from its members on an annual basis.

The provincial government's introduction of Bill 68, the Ontario motorist protection plan, on 15 September 1989 indicates that the government is committed to replacing the existing fault system and the individual's right of suit with a no-fault system permitting suit only above a certain threshold level.

The TIC believes that no-fault insurance is the most workable solution for both the driving public and the insurance industry. Studies completed throughout North America and the experience of no-fault provinces and states have proved that the system can be expected to stabilize costs and provide a vehicle for compen-

sation that will provide superior known benefits faster, more quickly delivered to all the injured parties.

The consumers serviced by TIC members are to a large extent the major corporations operating in Ontario. Our remarks are therefore slanted towards this interest.

In recent years, automobile insurance policy holders have become very vocal in their disenchantment with the current system. The public feeling seems to be that it has a right to drive and a right to have low-cost insurance. Lack of understanding about the nature and the operation of the insurance industry has added to the low public image of the industry. Inflation and a strong economy have significantly eroded the level of accident benefits available under the standard policy forms.

Finally, a complex and heavily burdened judicial system has led to a protracted and expensive process, sometimes taking years to finalize settlements. The tort system awards excessive settlements to some victims and fails to adequately compensate other accident victims. In some cases, victims of similar accidents who are of different economic means settle with different results. In other cases victims guilty of their own error as drivers are unable to receive compensation at all.

We believe that the OMPP addresses these problems well. The compensation delivery system will clearly define the benefits and the fast payout requirements should eliminate any economic hardship resulting from an automobile accident. The generous rehabilitation benefits will guarantee that all accident victims will have the same recovery program whether or not they have an employer-supplied benefit package.

The system will fail to protect a small portion of the population that earns very high incomes. The availability of excess limits through accident plans or automobile insurers should satisfy the needs of this group. It is our feeling that the number of situations of undercompensation under the OMPP will be substantially fewer than under the present system. In addition, other insurance programs available to these individuals will alleviate any potential undercompensation.

The threshold for suit by victims is quite high. TIC is in favour of the high threshold as it will

generally act to keep the cost of insurance lower. We are concerned, however, that the threshold should be very clearly described as it will have to survive a number of legal challenges immediately after Bill 68 is passed into law.

In our opinion the companion legislative bill, Bill 69, which deals with structured settlements, is equally important for the instances where injuries meet the threshold of Bill 68 and litigation is permitted.

TIC is very strongly in favour of the measures accompanying Bill 68, which can be categorized under the heading "Accident Prevention." A large part of controlling insurance costs comes down to reducing the risk of accident through such measures as road safety improvements, traffic monitoring, driver safety education and stepped-up law enforcement, complete with substantially increased penalties for speeding, unsafe driving practices and impaired driving. A holistic approach is the only viable way to stabilize insurance premium costs.

There are a number of items in the OMPP that are designed to provide consumer protection. TIC is in favour of these measures as they will require that greater information be provided to automobile insurance policyholders. We feel an informed customer is a more intelligent purchaser.

New data collection systems will be necessary for handling victims' injury claims. Insurers will be required to make major changes to their claims handling functions, which are likely to result in some initial claims and administration problems. As insurance brokers, we are also on the front line servicing our clients when accidents occur. We will have to ask for more detailed information from injured persons in order to aid the new systems to function efficiently. TIC member brokers will work closely with the insurance companies as they develop the necessary systems.

Our major concern about the OMPP in its present form is the potential adverse effect on insurance costs for our clients who operate heavy commercial vehicles whose gross vehicle weight is greater than 4,500 kilograms. Loss transfer provisions of Bill 68 will allow the insurer of an injured person, not at fault, to recover loss from the insurer of a heavy commercial vehicle that was responsible for the accident, at fault. We agree with this, as the truck would have an unfair advantage in any collision with a smaller vehicle. Our concern lies with the physical damage done in an accident.

Many commercial vehicles are quite sophisticated and of considerable value. An accident could occur where a private passenger vehicle, at fault, causes complete and total loss to a tractor-trailer unit, not at fault. The proposed system would require the full impact of this loss to fall on the commercial vehicle owner, thus adversely affecting his insurance premium if insured, or his financial position if not insured. We feel some consideration should be given to providing a threshold over which loss could be transferred to the party at fault.

We propose a revision to allow for loss transfer whereby the insurer of a heavy commercial vehicle may be indemnified for a physical damage loss that exceeds \$50,000 by the insurer of the driver responsible for the accident.

Briefly touching on the effect of the OMPP on the cost of automobile insurance, we feel that the Ontario government, insurance companies and insurance brokers must be heard loud and clear by the public. It will take two to three years to determine whether the pricing levels are adequate, either too high or too low. TIC does not believe that the public realizes how much time it will take to begin generating valid statistics, and if the public does not have all the facts and the proper perspective, the OMPP may not be permitted a fair opportunity to work for the driving public.

In conclusion, the TIC is in favour of this legislation as a viable step in developing a solution for the driving public that will result, hopefully, in stabilized premiums, improved accident benefits and greater efficiency in the process of dealing with all accident victims.

We respectfully submit this report.

The Chair: Thank you, sir. I have Mr Kormos, Mr Nixon, Mr Runciman and Mr Sola; five minutes each.

1010

Mr Kormos: I appreciate that you are a lobby group for brokers, but it remains that you appear to be speaking very supportively of this new insurance scheme contained in Bill 68. I understand in that regard, because we have heard insurance people in here day in and day out talking about how they are losing money hand over fist, how they just cannot bear it any more, and by gosh, something is going to have to give here.

It astounds me, once again, how major newspapers in Toronto and Ontario, such as the Toronto Star, can have darned close to a full-page ad, full of not even half-truths. Let's call them quarter-truths to be generous, okay?

This ad is not just in the Toronto Star. Here is the Star. By gosh. It is in our good friend the Toronto Sun, a full page, but then the Sun is a little bit smaller than the Star and to boot, and this is where you get into the real big bucks, the ad is repeated in the Globe and Mail.

I am told that a full-page ad in the Globe costs around \$30,000. This is not a full-page ad—oh, come on up here. Bring that to me. Let's say this is around \$20,000, okay? If it is \$20,000 in the Globe and it is around \$15,000 in the Star and maybe—to be conservative for the briefest of moments—it is around \$10,000 in the Sun, that is a hell of a lot of premium dollars that have been spent on real Goebbels fluff today.

I find it just incredible that you guys can talk about losing money hand over fist and are prepared to spit away drivers' premium dollars in this province pretty well to the tune of \$50,000 today alone. I have not included the advertising personnel costs of putting this stuff together. The sad thing is that this is not the first day this has happened and I suspect it is not going to be the last day.

It is even sadder that the stuff contained in those ads—\$50,000, I would suspect, minimum, \$50,000 of drivers' premium dollars spent on advertising in one day alone to promote a scheme that is only going to make you big bucks. I suspect it is going to happen again and again. As I say, what is saddest about it is that it is not even honest. It is the most dishonest sort of stuff because you guys have big stakes here.

Like so many of the other guys who come in here touting this legislation, you come in here and talk about studies completed throughout North America and that the experience of no-fault provinces and states have proved that the system can be expected to stabilize costs and provide a vehicle for compensation that will provide superior benefits. Why do you not name the studies?

You are just like the clowns who come in here and talk about the subsidies in the western system, but when they are pressed they sit there and sputter like an old two-cycle outboard motor. For Pete's sake, they cannot come up with it. They come in here full of fluff and bluster and they cannot come up with it.

You want to know about studies? Know about Osborne because Osborne said the threshold system was inefficient. Osborne said the threshold system was not going to stabilize costs. Osborne said the threshold system is totally unacceptable to drivers in Ontario. Take a look at Kruger and see what the Ontario Automobile

Insurance Board had to say about it. Kruger said that any perceived savings are one time only, but the costs are going to continue to rise and rise and rise.

You guys have the nerve to come in here and talk about studies. What studies? Produce them. Let's see them. Otherwise your credibility is diminished to less than it was yesterday. I tell you this, your credibility yesterday was zip because you have been gouging and screwing the drivers of Ontario for years and years and years now.

You have your buddies in government trying to ram through legislation that is the most dishonest, deceptive bit of legislation this House has seen for quite a while. I am sorry, but there is no more credibility. The Premier (Mr Peterson) lied in 1987 and now he has his lackies, his minister, his parliamentary assistant and some of his backbenchers lying for him again and again and again. Unbelievable.

The Chair: I would interrupt the member just to remind him that we are an extension of the House. We are holding hearings. In most cases the presenters who come before us come voluntarily. I would ask that we treat the presenters with an element of respect and that we refrain from calling everyone from the Premier to the parliamentary assistant to the members of the committee liars. That is unparliamentary language. I would ask that you refrain from that.

I have Mr Nixon, Mr Sola and Mr Runciman.

Mr D. W. Jones: Could I just make one quick comment?

The Chair: Sure.

Mr D. W. Jones: I have not been asked a question yet.

The Chair: No, that is why I did not ask you to respond.

Mr D. W. Jones: I have been berated.

The Chair: Mr Nixon and Mr Sola.

Mr J. B. Nixon: My question has to do with an issue raised on page 2 of your brief under paragraph 6. I did not understand the loss transfer that you allege will occur in the very unlikely situation, I would think, that a major heavy commercial vehicle is demolished or totalled by a private passenger vehicle. First, how often does that happen? Second, how does the loss transfer occur?

Mr D. W. Jones: Probably it happens more often the other way where the car is more heavily damaged than the truck, but if there is something on Highway 401, a car stops or is in an accident, and a truck has to swerve, get out of the way, and goes off and has to be demolished—these rigs cost

up to \$200,000. It is just, as we said, that if a car is at fault and the man or trucking fleet does not have collision insurance and they lose a couple of these \$300,000 rigs when they are not at fault in the accident, there should be some compensation back to the large truck owner, if they are not at fault.

Mr J. B. Nixon: What mechanism would there be?

Mr D. W. Jones: Something would have to be devised. There is nothing in—

Mr J. B. Nixon: Would a prudent commercial operator not buy collision insurance?

Mr D. W. Jones: It depends how big the fleet is and what deductibles he has. Some do not buy collision insurance. It is just economically not feasible to do so.

Mr J. B. Nixon: Clearly that is their business choice.

Mr D. W. Jones: That is correct.

Mr J. B. Nixon: They want to run the risk of travelling without coverage.

Mr D. W. Jones: That is correct.

The Chair: Mr Sola, two minutes.

Mr Sola: I am interested in a couple of comments you made. On page 1 you say, "In some cases, victims of similar accidents who are of different economic means settle with different results." Further down you say, "It is our feeling that the number of situations of undercompensation under the OMPP will be substantially fewer than under the present system." Could you elaborate on that. How often does undercompensation occur under the present system and how do you foresee the proposed system being more equitable?

Mr D. W. Jones: In the case of who can afford—in a lot of cases the law firms or the legal profession—to sue the insurance companies on their behalf, some people can afford it; some people not as well. We feel that under this new system people will be compensated much quicker and on a more equal basis.

If somebody wants to buy more accident benefit insurance or disability policy, he is able to do so if he feels that is necessary. We think initially people will be looked after a lot better and a lot quicker under this proposed system. What the percentage of undercompensation is, I would not want to hazard a guess.

Mr Sola: In other words, what you are saying is that it does not matter what your economic background is, under the proposed system with

the basic choice you will be compensated equally.

Mr D. W. Jones: The core product would probably do it equally. Then if you wanted to buy more, as I say, it would be available.

Mr Sola: On page 2 you say that as insurance brokers, you are on the front line servicing your clients when accidents occur. There have been points raised during the course of the hearings that the insurance companies will not really change their act all that much under the proposed system, that where people have difficulty obtaining their no-fault benefits, now they will continue to have the same difficulties. Since you are on the front line, do you foresee any change for the better with the proposed legislation?

Mr D. W. Jones: Yes, I do. In most cases, the claims are reported to our offices first and then to either the insurance company or an independent adjuster. We think that because of the penalties for not responding quickly, the public will be better looked after than waiting three or four days to hear from somebody, plus we will have to get more information, especially if there is a bodily injury claim, and respond quicker.

1020

Mr Sola: You are focusing on the penalty aspect of it. How about the fact that the companies will be dealing with their own clients rather than trying to slough them off on to the at-fault person's insurance? If it is a chain reaction, there can be problems as to who was at fault and which insurance company will pick up the costs. Will not just the fact that each insurer will have to deal with his or her own clients force a change in personality, so to speak, of the company in regard to its treatment of its clients?

Mr D. W. Jones: As brokers, as I say, when a claim occurs, it comes through our office. I think the insurance companies, through us, are going to have to change their attitude a bit or a lot. This is not an adversarial situation. This is a situation where our client is at fault or hurt, or there is some property damage and they have to respond. Hopefully, with our pressure—we are not insurance companies, we are brokers, we make commissions on the premiums—we can influence the insurance companies in making the claims faster and remove any sort of adversarial attitude that they might have towards our clients.

The Chair: I have a point of clarification from the parliamentary assistant on the loss transfer.

Mr Ferraro: Actually, it is on two points. On the one alluded to by Mr Nixon, it is our understanding that, indeed, heavy commercial

vehicles do not require collision because they have a direct form of compensation.

Mr D. W. Jones: No, the heavy vehicles—it is a business decision. You pay your premiums based on your claims experience. In order to eliminate small claims or even major claims, a lot of the major trucking firms choose not to buy collision insurance or buy \$50,000 deductibles and pay for their own damages to a certain point because they will have their own body shops or repair shops. But it is just strictly a business decision. They can buy a \$250 deductible; they can afford it.

Mr Ferraro: Maybe Ms Parrish can add a little more technical aspect for us.

Ms Parrish: If a heavy commercial vehicle is in an accident or any other vehicle is in an accident and is not at fault, it recovers under the direct compensation portion of its premium, which is compulsory and which it must have. They are paid completely by their own insurer at that point. If they are not at fault, they do not require collision insurance to get their rig repaired. That is the only point of clarification, that they would get the complete compensation back. There may be some effect on premium if it happens often enough, but it would be somewhat indirect.

Mr Runciman: I want to express my disappointment as well about your testimony here today. It bothers me, as someone who has been recognized as a free enterpriser, in dealing with people in the insurance industry and brokers especially, who are somewhat boastful of their support of free enterprise, to see the positions being taken by the brokers in this province, and the insurance industry as well, in fawning over the government's initiatives. I could use some more descriptive language but I am going to refrain.

But I want to say that, obviously, in my view, if you folks were true free enterprisers, you would not be sitting here with this sort of uncritical approach. Obviously, the bottom line is the most important factor with you and others in your operations and the industry itself, certainly not what is in the best interests of consumers or in the best interests of people who believe in free enterprise, in my view.

I have no personal discomfort with the position I have taken or my party has taken in respect to this issue, even though we have, over the years, certainly, tended to support the industry, tended to help out the brokers as much as we could. I want to just express my very severe disappoint-

ment with the positions that you and others in your business have taken on this issue.

I have to wonder why you are not expressing concerns about, for example, cherry picking. You have to have had those kinds of experiences, especially in the last few months, where we have had the industry manipulating the situation and tossing people into the Facility Association or tossing them into sister companies with much higher rates. Do you not have any concerns about those kinds of things occurring? Do you not have any concerns about the operations of the insurance industry and how it is going to function under this legislation? If you have, I would like to hear them.

Mr D. W. Jones: We certainly have concerns or we would not be making this submission. As far as putting—

Mr Runciman: This is a pat on the back. This is not a critical submission at all.

Mr D. W. Jones: Our report says exactly how we feel and how our members feel, that this is going to be beneficial to our customers.

Mr Runciman: Come on.

Mr D. W. Jones: We do not put people into the Facility.

Mr Runciman: It is going to be beneficial to your bottom lines. That is essentially what we are talking about.

Mr D. W. Jones: No, I think it is going to stabilize the insurance premiums for the consumer.

Mr Runciman: It is like Mr Nader said yesterday: If you want to lose weight you can cut off an arm, but most of us would not do that to achieve a weight loss. What you are doing here is reducing benefits. Of course, it is the old argument. If you continue to reduce benefits, you are going to reduce the costs and stabilize rates. There is no question about it. That is, in effect, what is happening here.

Mr D. W. Jones: No, I think what we are doing is eliminating the legal costs.

Mr Runciman: That is a bunch of baloney and you know it. I simply want to put on the record my very significant disappointment in the position your organization has taken, and other brokers across this province.

Mr Farnan: Just very briefly, the question was raised whether the Premier lied. We know the Premier said in Cambridge that he had a very specific plan to reduce insurance rates. My concern is, is it possible that the Premier is uninformed as to what is happening? Is he aware

that the Minister of Financial Institutions (Mr Elston) is pushing forward legislation that is in direct contradiction to what the Premier said and the commitment that the Premier made to the people of Ontario?

Mr Kormos: Maybe he is not a liar; he is just dumb.

Mr Farnan: The consumers of Ontario very simply see this in very clear terms. If this was a package of cereals, you are getting less flakes in the package and you are paying more for it. That is a ripoff. It does not matter what you say. It is the insurance companies and the brokers who are coming along and saying: "This is a great piece of legislation. We are giving less product and we are getting more money." That is a ripoff for consumers, and it does not matter how many insurance companies come along here. They have the same message. But consumers can see through that.

I just hope that the Premier gets briefed, that he realizes how he is being simply led down the garden path by the Minister of Financial Institutions and by the members of this committee. The Premier better get briefed soon, or else indeed there is danger that the people of Ontario may perceive the Premier as lying.

Let's hope the Premier is not lying. He did make the commitment that insurance premiums would be reduced. They have gone up 25 per cent at this stage; they are going to go up further and the benefits are going down. That is a ripoff for consumers and, indeed, we have to question where the Premier stands on his statement of 7 September 1987.

Mr Kormos: I think it is a lie, Mike.

The Chair: Thank you for your presentation today. We appreciate that.

From the Ontario Head Injury Association, Ray Rempel, Jeremy Rempel and Bob Miller.

Mr R. Rempel: Mr Chairman, it is Jeremy and me, Ray Rempel.

The Chair: Okay. For the next half hour the committee time is your time. I would suggest 15 minutes to go through your presentation—it has been distributed by the clerk—if possible, and then allow 15 minutes for some questions and answers. We are yours.

1030

ONTARIO HEAD INJURY ASSOCIATION

Mr R. Rempel: My son Jeremy and I represent a very unempowered group. We are the people who have experienced automobile acci-

dents and experienced automobile litigation and the various means of settlement. We also represent people who will experience. The reason I say we are unempowered is because accidents happen throughout the province, from Thunder Bay down to the peninsula and east to west, and we are not a unified group. So we do not have money, we do not have lawyers and we do not have accountants. Because of that I apologize for a few of the typos in the document as well.

I truly wish that, as with the Osborne commission and the Kruger commission, we had been invited to provide some input as to our experiences. I think those experiences would have been valuable as this legislation was being framed, but we were never asked or allowed to participate in the development of this. I think that we, as a group who have lived through it, would have provided another picture than the one that you see in the ads that Mr Kormos was referring to.

Jeremy will first present our perceptions that he and I have talked about, and present it through his eyes.

Mr J. Rempel: Gentlemen, my name is Jeremy Rempel. I am 18 years old and was a victim of a bicycle/motor vehicle accident in 1980. I have had my terrible experience with the auto insurance industry and I have nothing to lose or gain personally by whatever form this legislation eventually takes. I am here, though, to speak for those 35 people each day in the province of Ontario who are involved in motor vehicle accidents in which they sustain brain injury. Why, you might ask, would I care about them? My efforts to recapture a lifestyle that is meaningful to me has not been an easy one. With the support of those close to me, my community, my family and my most natural peer group, I have, to this point, beaten the odds and am very successful and happy at what I do.

Although you can see that I depend on a wheelchair to get around, those physical problems are very minimal. In that aspect I do not even consider myself to be a disabled person. I have won gold medals at international track meets in sprinting and continue to represent Canada on the world track scene. I have been able to remove the handicapping conditions that frequently stop people from physical access to the community, so in that regard I am truly not handicapped.

The impairment that keeps me from participating successfully in the academic world and the world of business and quick decision-making is

the subtle damage that my brain experienced in the accident. Although my hands and arms can move at a speed that propelled me quickly enough to win gold medals, those same hands and arms cannot successfully button or unbutton my shirts. If more time had been allotted to us, I would demonstrate that problem for you.

Unfortunately, the nervous system process that makes fine hand co-ordination almost impossible is involved in limiting me from making smooth and immediate planning decisions, and as well keeps me from thinking sequentially. What that means basically is that I really no longer have the ability to comprehend numbers. It is so severe, in fact, that I cannot associate my times and distances in the sprints in which I compete. When asked by the media and friends the winning times for the 400-, 200- and 100-metre sprints, I have no way of putting the proper time to the appropriate race.

My IQ is the same as it ever was, be that high or low. I participate in my local high school and am successful in some classes. Because of this impairment, I cannot even attempt other classes.

The point that I want to make to you is that these deficits that I have just described are very common among people who have sustained a blow to the brain. Sitting here observing me you would, I suspect, be led to believe that I would be one of those persons meeting the threshold. That is what I want to talk to you about. Probably I would not have a lot of difficulty in meeting the threshold in regard to demonstrating that my arms and legs are seriously and permanently impaired, and I am sure that they would be considered important to bodily function.

I just described to you, and I doubt that you will believe me, that those are not my disabling features. I have demonstrated that without 100 per cent functioning arms and legs I can live a very productive and meaningful lifestyle. It is, however, those little pockets of damage to some important cells within my brain that stop me from truly participating in life as I might have had I not sustained a blow to the brain.

As sophisticated as modern science has become—and I do not know the names of all the machines that are used for measuring brain activity—the best brain scientists in the world have indicated that they cannot prove through illustrations and pictures of my actual brain that it is one indefinable brain cell that caused the damage and prohibits my abilities from functioning as described.

As I stated earlier, the deficits that I have described are not unusual in persons who have

sustained a blow to the brain. Thirty-five people every day in Ontario will experience to some degree what I experienced. With the new legislation, the ones most physically damaged will be the lucky ones. Those who have had the ability to make decisions taken away but cannot prove it through pictures will have to argue very sophisticated scientific principles on their own against the insurance companies' doctors and lawyers, with all their resources. My friends will not have any opportunity to try to recapture what might have been. That is not why we have insurance, is it? But the insurance company will make a profit.

Very simply and realistically speaking, those people I have described will no longer have the opportunity to bring an action against somebody who, through carelessness, destroyed an important part of their life. That is not right. As I stated earlier, I have had my experience; but when you consider that 14,000 people each year will follow me in the same unfortunate experience, it may very well be one of your children or one of your neighbour's children who will live in the condition that I live in and who will have no opportunity to attempt to recapture any decency to life by having the person who caused the accident take responsibility and have his or her insurance company assist him on his road back to a decent lifestyle.

Why am I here? Is it natural for an 18-year-old to come and talk to you? I am here because five years ago my father began a plan to assist head-injured people to have reasonable opportunities to gain as much of a life as they could after an accident. In our household an awful lot of energy is spent working on behalf of people who live with the effects of a head injury. You might say that our entire family has been caught up with that mission.

Although there are a lot of things I cannot do in this life because of my accident, one thing that I can do and do well is assist my father as he works to make things different for those who have already had a head injury and for those 14,000 each year who we know will follow me and be the victims of head injuries because of careless accidents on Ontario's roads.

Mr R. Rempel: You have just heard from my son, Jeremy.

There is really one reason for the existence of reasonable insurance plans: to allow a person to buy the amount of risk that he or she cannot afford to self-insure and to provide adequate financial input for a victim where a third party has been negligent; further, through the existing

no-fault, as inadequate as it is, and the proposed legislation, to assist a person who has sustained a debilitating accident where fault was not the issue to regain the ability to participate as fully in life as possible.

I was an insurance broker for most of my adult life and I enjoyed the work. But I was also aware of the industry and participated fully as a professional in that industry. I was aware that insurance companies have not in any way attempted to keep up with the technological and electronic advances in the money business.

I was also aware that the marketing strategies have not in any way kept pace with the marketing strategies of other money businesses. Ask any insurance agent in the province what "creaming" means; ask him about the "competitive cycles" in the auto insurance industry.

Third and most telling, in 1960, when an automobile cost \$2,500, insurance companies were marketing \$100 deductibles. In 1990, when automobiles cost \$25,000, insurance companies are marketing \$100 deductibles. It is absurd. Insurance companies have attempted to make the purchase of risk an exchange of dollars, and it has not worked.

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Additionally, if you want to talk about the sophistication of the money markets in the insurance business, ask them about the SEF-42, which was an endorsement that they encouraged, that they developed, that they promoted, and it was a horrendous amendment to automobile insurance. No consumer asked for that. It was so poorly worded that it caused the typical settlement at that time to go from about \$60,000 to frequently in excess of \$1 million. It was an attempt at grabbing some additional premium dollars that backfired. Now we are supposed to bail them out for their stupidity. The SEF-42 was replaced on the market by the SEF-44, and that continued to create problems for them.

Let's move on. I have begun to hear references now to the fact that this eight per cent increase is going to provide a minimum policy and that most people will want to purchase additional benefits to ensure that they are adequately protected. That is really fascinating. In my mind, what that means is that what they are going to sell me is inadequate and they are going to dun me for more premium dollars in order to have adequate protection, and that the eight per cent figure is really a dishonest representation of what the real premium increases will be.

This major money market, the insurance industry, has been one in which cash flow has

been so significant and so readily available that it has begged the question for state-of-the-art electronic business practice. As recently as 11 January the Financial Post recorded the year-end results of Royal Insurance Co. It was interesting to note that even with the irresponsible marketing and the financial management of auto insurance companies as a whole, they paid out only \$1.09 on every premium dollar.

You may ask, "How can they make money in that kind of a scenario?" Well, if they were to initiate some of the practices that I did not bother reading but you have in front of you, I wonder how close they would come to being truly profitable.

Additionally, a simple sharing of the risk-money scheme, the reason that people buy insurance, has been turned into a tremendous insurance adjustment bureaucracy empire, and no longer do insurance companies insure unaffordable risk; they have rather become savings accounts to be paid out upon the occurrence of an automobile accident. With a \$25,000 car, to have a \$100 deductible on it is absurd if that was an adequate deductible in 1960 for a \$2,000 car.

Much more significant in this is a situation where a person has the minimum \$200,000 bodily injury limits on his policy. It is the norm—and there is a case right now, as I understand, in downtown Toronto—and it is very typical that we hear regularly on our help line that in the event of serious bodily injury to a third party, where it is evident that this person will never come close to recapturing his or her previous health and ability, such a claim will still easily take up the four years to settle. Why would that experience occur? Because it is good business practice and profitable in the insurance company's eyes to use such an approach.

One of my typos is on the next page—it is Dr Hans Tueber—and I am embarrassed to say that. When he sees the typo "Tucker," and I will send this to him, he will laugh about it. Dr Hans Tueber from the University of Washington is an eminent researcher and clinician whose life work is with head injury. In his literature he stresses that "absence of evidence"—and this is what Jeremy was referring to—"is not evidence of absence." Rather, it is that when you are looking for the physical damage that causes the cognitive dysfunctioning after an injury to the brain. Just because we do not have the technological marbles to the point where we can pinpoint the damage does not mean the damage has not occurred. Generally, you will hear people talking about psychological damage, and it is not

psychological damage: it is damage to the physical brain that we still just cannot necessarily identify.

The threshold language does not leave any room for this kind of scientific observation that Tueber talks about. The fact is that medical research regarding the brain and the ultimate long-lasting effects is only in its infancy. However, even now, we know that the subtle damage that Jeremy referred to has devastating effects. People with subtle brain damage who do not happen to have a neurologist as a parent will not even have a real opportunity to successfully argue for the threshold. Gone are the days where a lawyer will take on a case where it is evident that there is third-party liability.

The insurance company, with its battery of lawyers, doctors, accountants, investigators and adjusters against a person whose very injury generally diminishes his executive planning decision abilities—that is quite a match, is it not? Should the victim successfully challenge the threshold, the insurance company has the right to appeal that challenge at various stages. The victim has the right now to sue. Once he gets into court, begins to spend and mortgages his house, the insurance company has the right to challenge that and to ask the judge to dismiss this.

With their financial resources pitted against me, the victim, one wonders who will ultimately wear whom down. I do not think we have to wonder very hard. If the whole issue of liability and subsequent right to compensation is to retain any integrity, the threshold has to provide reasonable access to litigation.

What we are telling you is, please retain the right for persons to have a judge or a body of their peers determine liability and the quantity of dollars that can be wisely used for a person like Jeremy to experience reasonable access. I will quit in a minute, Mr Chairman.

What has happened is that the government has bailed out many industries over a period of time. That is the government's business; I have no argument with that. But you are not bailing out the insurance companies here; we are. The people who experienced accidents are bailing them out. The burden of the bailout falls on future victims.

Do you know that the rehabilitation that is made available through OHIP and the impending insurance litigation is not what helped Jeremy get healthy. What helped Jeremy get healthy was getting involved in his community, accessing community, but it is a hell of a lot more expensive when you are accessing community in

the condition that Jeremy was in after the accident and still is in. The costs are tremendously exacerbated. What we are asking for is that, where a person has been an innocent victim, somebody other than an insurance adjuster or a little tribunal such as now exists with workers' compensation would be the people who would determine his future.

Perhaps some insurance companies are going to have to go out of business. Perhaps you, the government, are going to have to initiate a government-owned plan. I do not know. But what you people are doing—and I respect Mr Elston; I think he is fine gentleman—is tremendously counterproductive to people who sustain life-altering, though apparently mild, injuries.

We have no vested interest in being here. God, we have been through this system. But we have to speak on behalf of the people who we know end up calling our association on a daily basis. That is why we are here, and that is the only reason.

The Chair: Thank you, both Mr Rempels, for your presentation. I have Mr Farnan, Mr Kormos, Mr Runciman and Mr Nixon and Mrs LeBourdais. Mr Farnan and Mr Kormos for four minutes.

Mr Farnan: Thank you very much for your presentation. It was extremely powerful. I just wish every individual in Ontario could have heard this presentation because if they heard it, this legislation would not be going through. It is as simple as that. I think the facts and justice are on your side, as you have expressed them.

To me, the most powerful statement that you made was, "We're scattered and we don't have a lot of money." I think what you are doing is appealing to the truth and justice of your situation to move the government to listen, to reflect and to withdraw this legislation.

Here is a piece of information—a flyer produced and paid for by the insurance companies and distributed to every household where there was a New Democrat running in the last election or where there was a possibility that the New Democrat might get elected because of our position vis-à-vis insurance. Do you have the kind of money to produce this kind of advertising and to actually pay for its distribution to all those households?

Mr R. Rempel: We have virtually no money. We are constantly operating at a deficit.

Mr Farnan: Do you have the kind of money that would pay for this kind of full-page advertising in newspapers like the Sun, the Star and the Globe?

Mr R. Rempel: We would love to have that kind of money to make people aware of the fact that we are there to help them, but we do not.

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Mr Farnan: The reality of the matter is that money talks, and the insurance companies invested heavily in the Liberal Party, hundreds of thousands of dollars, to put this kind of propaganda into the homes of every household, as I said, where New Democrats were running, because they realized we would not allow the kind of ripoff that the insurance companies have been perpetrating for so long.

My friend, the only hope is that somehow the truth will out. I think your presence here is absolutely marvellous. But how can we get your message out to the people of Ontario against the insurance companies? We cannot.

There is only one hope, in my view, of saving people like Jeremy and other victims of this kind of tragedy, and that is if one person listens, and that person is the Premier of Ontario. The Premier of Ontario has to listen to Jeremy, and he has to listen to victims of accidents. The Premier of Ontario has to say to himself, "This is wrong, this is unjust," and then he will tell the 94 performing seals: "No, we've changed our mind. We're not going to push this legislation; we're going to withdraw it."

That is the situation. Not one member of the Liberal Party has broken ranks on any significant piece of legislation in the two years of this government. I do not expect that it will happen on this legislation unless the Premier of Ontario says: "We've made a mistake. People like Jeremy are right. We'd better do something about it. Let's break our ties with the insurance companies. Let's do what's right and what's just."

The Chair: Mr Nixon, Mrs LeBourdais and Ms Oddie Munro for four minutes.

Mr J. B. Nixon: Thank you for appearing before the committee. I have a question which relates specifically to the threshold. It is my understanding that all of the head injuries that you are concerned about are caused by a blow to the head.

Mr R. Rempel: Yes.

Mr J. B. Nixon: There is evidence of a physical blow to the head.

Mr R. Rempel: No. There is not necessarily evidence of a physical blow to the head. Jeremy was in a coma. There is no obvious evidence. Many people are in a coma with no physical evidence except that the person is unconscious.

Mr J. B. Nixon: Okay, let me rephrase it. They are struck by a car or thrown by a car and there is a physical injury; following that there is a development of some form of mental disability. It is my understanding, and I think we have got to clarify this, that those events by themselves would entitle the injured victim, whether or not he is at fault or can or cannot find someone to sue, to exceed the threshold.

Mr R. Rempel: I do not mean to be a smart-aleck, but your understanding differs from most neurologists and neuropsychologists who work with head-injured people.

Mr J. B. Nixon: We did have the Ontario Psychiatric Association here yesterday. I asked them that question, and they did not venture a legal opinion. I pointed out to them that in an undertaking given to this committee by the insurance bureau to elaborate its understanding of the threshold, its representatives said, "The only mental injuries excluded by the threshold are those where there is no physical cause for the symptoms of the injured person."

Mr R. Rempel: But what Jeremy pointed out is that that technology is still so primitive that although certain cells, cells that are so small that you do not see them to begin with, cannot be pinpointed as having created the damage. The insurance companies will argue, as they always have, that this is a psychological injury, that it is a post-traumatic syndrome and that type of thing. But the neurologists and the neuropsychologists recognize this behaviour as emanating from certain types of damage to the brain. There has just been so much new ground broken in that regard in the courts in the past few years, but when you look at the threshold, it in no way makes room for that kind of injury—none.

Mr J. B. Nixon: Whether you are suing in the courts today or whether you exceeded the threshold and sued in the courts under this new program of insurance, you would always face those battles. The real benefit of this legislation is for those who cannot find anyone to sue or cannot stand the trauma of a court situation?

Mr R. Rempel: But that is not what we buy insurance for.

Mr J. B. Nixon: Can I just finish? You buy insurance to have protection in the case that someone else is at fault and you can prove it in the court.

Mr R. Rempel: Yes.

Mr J. B. Nixon: This 30 per cent of the victims who can never find anyone and get the existing measly no-fault benefits of \$140 a week,

or in Jeremy's case it would have been nothing, I think, to a maximum of \$25,000.

Mr R. Rempel: That is right, and we tremendously support the concept of no-fault, but the whole concept of insurance is to help that person recapture quality of life, and unfortunately, Mr Nixon, I respect you, but you are wrong in that regard. Let's open up that threshold a little bit and talk about people who have apparent instead of permanent and serious injuries. I do not know the legal terms, but you are precluding those people.

It is a silly term; it is called a mild head injury. We call it a life-altering mild head injury, and that is the point Jeremy was making. If I can no longer hold down a job, if I can no longer pass the classes I used to pass, do you call that a mild head injury? Those are the kinds of cases that are not going to pass the threshold, even where there was fault, and that is blatantly clear.

Mr J. B. Nixon: It is not blatantly clear. All of us, members on the committee and people like yourself who are making presentations, would benefit from having that clarified, but I suggest to you that it is not blatantly clear.

Mr J. Rempel: Most lawyers and insurance adjusters, and basically people in general, the average Joe on the street, if they see a guy like myself or somebody else who looks lost or whatever, they just usually think, "He's stupid" or "He's dumb" or "He doesn't know what he's doing." But what the person is really doing is he is trying to survive in public life, and he does not know where to go or what to do or anything. I think that basically, like my dad said, what a traumatically head-injured person needs to get back into basic life is the support of his family, his community, his friends and whatever. They just need to work and work and work at it or else nothing is going to happen. It is pretty sad.

Mr Runciman: I want to concur with Mr Farnan in respect to this testimony. I think much of the testimony we have heard before us since we have been sitting has been pretty much self-serving, and what we have heard here has been most moving, honest and heartfelt, certainly in terms of its impact on me and I hope on all members of this committee; it has been very significant.

We have been critical of the Premier. My colleague used a word earlier that was described as unparliamentary, and I am not going to use it, but I want to say that I concur completely. What we have witnessed and expressed concern about here in the past has been essentially a financial cost. We have talked about the taxpayers'

subsidies and so on, but what we are hearing here today is really the human costs associated with this legislation and this initiative.

I said in my opening comments that government members are ashamed to explain why the threshold has been designed to exclude cases such as the ones we have heard described today. It is really essentially a tragedy, a travesty.

Again, I want to talk about the government backbenchers. I am sure that they are feeling some discomfort, and obviously I respect Mr Nixon's intelligence and abilities, but he has perhaps appointed himself to be the apologist on this legislation; I do not know. I am going to try to appeal to him because I have dealt with him on this issue in the past.

I have been through this exercise myself serving as a government backbencher for a number of years, and I know it is always a difficult situation, even when you feel very strongly personally that what your party is doing is not in the best interests of the people you represent.

It is a difficult one to make. We are all here with some ambitions. I made a decision a number of years ago when I opposed Premier Davis on the acquisition of Suncor. I was the only member of my caucus to do so, and I probably suffered a penalty for that in terms of my personal ambitions. But I think that if you take a look at this legislation and you pay attention to what Jeremy and his father have told us today, I just want to join with Mr Farnan in making an appeal to at least three of you across the way to join with us and make sure that this legislation does not go through. You may pay a penalty in terms of personal advancement for a limited period of time, but I want to say that I have never felt badly about the decision I made a number of years ago, and I am sure, with respect to this legislation, that you will not feel badly in the long run.

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The Chair: Gentlemen, thank you for your presentation today.

Mr R. Rempel: Can I make one really quick comment?

The Chair: Sure.

Mr R. Rempel: In response to Mr Nixon, you should know that brain injury is the number one disabler and killer of people under the age of 35, so if the insurance companies and the government are interested in serving that population, the threshold should refer to it. The threshold should then make exception for persons who have sustained brain injury.

Second, another thing for you to be concerned about, I think, is that based upon my experience, both as an insurance broker and now working with people with head injuries, the new system will become adversarial between the client and his insurer. The reason for that is, the company can easily find a doctor who will write a person off and say there is no point in spending that kind of money. By the way, that is what happened to Jeremy. That was what the argument was about; he was supposed to live his life out in a chronic care ward. Then I, as a client, will either get in and start fighting the insurance company or I will succumb. That is where you are going to see the adversarial system change. There will still be an adversarial system, but one adversary will have one hell of an advantage over the other.

The Chair: It is my understanding, for your information, without getting or wanting to seek further clarification, that this is what the whole mediation process is put in place for. We would be interested in your comments on the mediation process as proposed under this legislation dealing with that particular fact.

Mr R. Rempel: I know of insurance companies that have used gynaecologists, just because they have an MD behind their name, to say that this person would not benefit from rehabilitation. So I have real difficulty believing in the efficacy of mediation, unless the consumer is really—and that is what happens in court, where the consumers are the jury. It seems to me that the balance of power cannot be in the hands of the person who took the financial risk of buying your risk.

The Chair: I think the committee would be interested if you would review it and get any information back to the clerk. Again, thank you very much for your presentation.

Mr Jones, from the Toronto Transit Commission. I am informed by the clerk that there is not a written presentation, not unless he has one that he is prepared to distribute at this time.

Mr G. Jones: No, I have not had an opportunity to put one together because of various things I have been doing. I have given some thought to it and I have some notes, but I do not actually have a written presentation.

The Chair: I suggest that about 15 minutes for a presentation and then 15 minutes for some questions and comments later would be most appropriate.

TORONTO TRANSIT COMMISSION

Mr G. Jones: Sure, I will do what I can.

I come before you really wearing two hats, I suppose. My first hat would be as corporation counsel for the Toronto Transit Commission. In that role, what I would like to do is give you something of a municipal transit viewpoint with regard to Bill 68, the proposed legislation. The second hat that I wear is one of 12 years now as a personal injury lawyer, doing both plaintiff and defence work. Really, 90 per cent of my time has been spent on personal injury litigation over those years.

If I could deal first with the first hat, as corporate counsel for the TTC and the municipal transit viewpoint, after studying the legislation at some length, the TTC certainly supports the legislation as an attempt to come to grips with rising personal injury costs. It is a concern with municipal transit organizations and, more specifically, with the Toronto Transit Commission.

The commission itself has approximately 1,800 buses and trolley coaches and close to 300 streetcars. We carry something in the vicinity of 500 million people a year through the entire system and we also have the expanding Wheel-Trans operation for the handicapped.

In terms of the escalation of the payout that we are making, the Toronto Transit Commission is essentially self-insured. There are some catastrophe policies in place and there is a fronting policy as required by the Compulsory Automobile Insurance Act, but for all intents and purposes, the dollar that is paid out to a claimant comes out of the fare box. There is no profit certainly. It is a straight flow-through, as it were.

Before I came down here I did take the opportunity to look at how our payouts are increasing. In 1984, we paid out \$2.78 million to claims. By 1988, that was up to \$5.428 million, or essentially double in those four years. It varied a little bit by year, but it is going up at around 25 per cent a year over that time. Those are the figures that I grabbed quickly. I noticed before I came down today that in 1983 it had gone up more than 25 per cent, but it has been a flow in that direction and in that approximate amount.

The point that I would like to make at this juncture is that it is not profit, it is not gouging anyone. It is simply coming out of the taxpayer's dollar or, more properly, the transit patron's dollar. The TTC, certainly historically, is not known, I think, as an easy touch when it comes to personal injury claims. For various legitimate reasons, we try to take a fairly hard line, pay all legitimate claims but look at them closely and carefully first.

The other thing that I noted in going through our statistics was that the number of claimants is not going up very dramatically; it is the amount of payout per claim that tends to be going up. It tends to be on what I would call the relatively minor claims, with perhaps the stress on the "relatively." Those are the ones that are escalating quite rapidly—the soft-tissue injuries, this sort of thing—as opposed to the absolute catastrophe cases.

The concern that we have at the commission is to try to keep the costs within reasonable limits. We appreciate that costs are going up. We want to keep it within those reasonable limits. I think everyone would agree that to keep the cost of public transit low is desirable. We provide certain benefits to society, of relatively cheap transportation to those who cannot afford it. It also encourages people who do have cars to use public transit if the price can be kept down. That, of course, is beneficial in any number of ways, whether it be keeping other vehicles out of the downtown core or having fewer accidents with fewer vehicles on the road, this sort of thing, keeping the accidents down. But the important thing is to keep, within limits, the cost of this down.

In looking at the present system that we have been working with, I myself personally for 12 years, and of course long before that—there are certain concerns that the commission has and that I myself have. I have already alluded briefly to the economic escalation, the cost of the system going up dramatically.

The other concern I have that I want to make mention of is the idea of the tort lottery system. The more I see it, the more I am convinced that all too often we are ending up in a situation where the system has too many variables in terms of the end of the road and what that person ends up with, whether he has a good lawyer or whether his witness happens to be a good witness or a bad witness.

Too often I have seen—and in fact I can think of a case handled last October—that it comes down to the fact that what happens on the road and what happens in court are often too different things. It is who happens to have the best lawyer or who happens to have a witness who is more articulate than the other person. Two persons who have the same injury are not going, in all probability, to end up with the same number of dollars under the tort system at the end of the road.

1110

I was thinking on the way down of someone who had once said that the jury is a group of six or

12 persons who are selected to choose who has the best lawyer, and there may be a certain amount of truth to that, unfortunately. That is not right and that is not how it should work.

The other thing that I thought the committee might be interested in are the costs. In the usual personal injury claim, the costs, I perceive, are tending to get a little bit out of hand. For the medical reports in the average personal injury case that goes to litigation, you usually have, for the basic whiplash injury, at least two family doctor reports, two or three probably, and they will go for anywhere from \$250 to \$500 a report. You have orthopaedic surgeons from whom you will probably have an interim and a final report. Those will go anywhere from probably \$450 to \$750. If you get a psychiatrist involved, you are up to somewhere between \$750 and probably \$1,200. Then you have the lawyers on top of that, and they are going to take, as a rule of thumb, 15 per cent above and beyond what the settlement is from the insurance company itself. They will take 15 per cent, and then they turn around and take somewhere between 20 per cent and 25 per cent from the client's settlement.

The next concern that I have with regard to the present system is the emotional cost as one runs through this system. With a personal injury claim that goes to court, you are doing well if you get it through in three years. There are plenty of cases that take five, six and more years. That is not desirable. We have to speed up the system. That is one of the failings of the system. It tends to eat at the person who is going through the system; it has to. It is going to bother them. It is going to nag at them and that in itself, as I read in so many reports, tends to fuel the problem.

In terms of the present legislation, or Bill 68, the TTC, as I have said, generally supports that legislation as an attempt to get rid of a system that is not working particularly well, is costing a great deal of money and is not providing the benefits as quickly, I submit, as we would like. It is taking off too much money to the middlemen, if you will, to the doctors to a certain extent and even to the lawyers. I say that with a certain hesitation, having worked with and known the lawyers very well in the personal injury field for the last 12 years.

Concerning the specific concerns with regard to Bill 68 that I did want to bring to the committee's attention, there are two of them as it relates to municipal transit and, more specifically, to the TTC. The first one is with regard to buses versus streetcars. I have brought this matter to the attention of the office of the

superintendent of insurance, and I understand it has looked at it and is in general agreement.

The problem is that the buses and trolley cars, of which there are approximately 1,900, are covered by the proposed legislation. The 300 or so streetcars are not covered by the proposed legislation. The reason for that is a historic anomaly. Basically a streetcar is not an automobile under the Insurance Act. It goes back a long way in history and there are certain reasons for keeping them separate under the Highway Traffic Act, because a streetcar does not have a lot of what a car has and vice versa.

But in terms of insurance legislation at this time, I can see no valid or justifiable reason for distinguishing between the two. It makes no sense that if a patron is injured on a bus, he should receive the no-fault benefits—in a similar situation a bus could be travelling beside a streetcar on certain routes—and if the person is injured on a streetcar he should not receive those benefits. That is not desirable and it is not justifiable. It can be remedied by an amendment to the Insurance Act and to the Compulsory Automobile Insurance Act, and I submit it should be done.

It is not going to cost very much. In fact, the ramifications are not terribly large in the overall scheme of things. But it is unjustifiable. It would also cause havoc with the TTC trying to administer two systems, quite frankly.

The other point that I want to deal with very briefly is workers' compensation injuries to TTC operators. The TTC is a schedule 2 employer under the Workers' Compensation Act. When a driver is injured on the road, he receives workers' compensation, but the compensation board then bills the TTC dollar for dollar and we pay it out. Under the proposed legislation, there would be no subrogation right for that amount, as I understand it.

I support the general idea of stopping double recovery, which is what was happening in the past. I have some concerns over the approximately \$500,000 a year that TTC pays out to injured operators through workers' compensation and then has no subrogation right against other parties, especially in cases that go beyond the threshold.

Those are my two primary concerns.

I see my time is somewhat limited, so I will get on to my comments wearing my second hat. A lot of the comments are very similar to those as corporate counsel. As a personal injury lawyer with 12 years' experience in handling everything from very small whiplash injuries to fatalities—I

was thinking of this on the way down—I have done approximately, I think, 65 per cent defence work and maybe 35 per cent plaintiff work over the years.

My comments remain essentially the same as when wearing the hat of corporate counsel. The system is not working particularly well. There is a need to get the benefits to the people faster, to the people who are not necessarily at fault, the people who cannot afford a good lawyer. The discrepancies are too great, it is taking too long and the penalties for momentary inattention where you are at fault are, I submit, too great.

The cost factors, I have already dealt with. Certainly, I have had long discussions with members of my profession and members of the Committee for Fair Action in Insurance Reform, with whom I am well acquainted. FAIR has presented some very interesting and valid points and some concern. On the other hand, quite frankly, I think there is a considerable amount of self-interest involved.

Personal injury work is a very lucrative business for personal injury lawyers. I know that myself. I have dealt with it long enough. I think you should keep that in mind when hearing what you hear. I worked out what I would consider a relatively small, middle-of-the-road, soft-tissue injury where there is \$15,000 worth of lost wages: General damages would be about \$10,000, for a total of \$25,000.

The lawyer for the plaintiff then takes an additional 15 per cent from the insurance company, which works out to around \$3,750, and then takes about 20 per cent from his client from the settlement. The lawyer ends up getting approximately \$8,750, or close to \$9,000, and the plaintiff goes home with \$20,000. It is an awfully expensive middleman in a lot of cases—not every case, by all means—but it is significant and I have some real difficulty with it.

The only other point that I have to make, and I will wind up, is the concern that I hear so often with regard to, "Well, it's insurance company gouging and the insurance companies are getting a great deal on this thing." Maybe they are; I am not an economist. However, I do have a couple of points to make. One is that the TTC is not making a profit in this business of paying out claims. We are paying an increase of approximately 25 per cent a year. That is not taking into account any desire for profit.

The other thing is, when I was reading over the bill again last night, it seems to me that the Ontario Insurance Commission, as set up in Bill 68, does have the power, the right and the duty to

examine the insurance companies' books, and as I read the bill, they have the right to set insurance rates. I would have thought that will allow for a considerable amount of control—not a perfect control perhaps—but it seems to me to be a tool that can be used to try to keep things in line.

I have gone a little bit over, for which I apologize, but those are my comments, quickly.

1120

The Chair: No problem. Mr Farnan and Ms Oddie Munro; five minutes, Mr Farnan.

Mr Farnan: I will not take that long.

Thank you for your presentation. It is a focused presentation from your particular standpoint and I appreciate the points you made. I just want to touch on one word—this is a comment as opposed to a question—and that is the area of “self-interest.”

Every individual, every group and every agency has a self-interest when it looks at the situation. The consumer, in my view, wants protection. They want a fair value assessment. When you made the point about self-interest, I think you reflected on the Committee for Fair Action in Insurance Reform and the lawyer group, but I want to make the point that self-interest has been a demonstrated *modus operandi* of the insurance industry over the past many years.

On the point you make in terms of what the government can do, the government has shown a great lack of ability to intervene in a manner that would rein in the insurance industry. The government has set up boards. It has refused to listen to those boards and basically it has succumbed to the desires of the insurance industry with this piece of legislation.

When we talk about self-interest, if you take all the players who look at a piece of legislation when the piece of legislation comes out and one rubs his hands with glee and says, “This is a terrific piece of legislation,” and the others say: “Hey, hold on a minute. I’m not being served by this legislation,” then you would probably surmise from this that the self-interest of the individual or groups that clapped their hands with glee has been served by the legislation.

Those like Jeremy Rempel who just appeared before us, head-injured individuals across the province, victims of accidents in the future, will look at this legislation and say: “Hey, we’re being punished. We’re the victims not only of the accident but we’re going to be the people who pay for the auto insurance profits of the future.” These people say, “Hey, this isn’t fair legislation.”

I propose to you that without looking at the legislation in any detail, any consumer out there who looked at the reaction of the major players would ask, “Isn’t it strange that the insurance companies are clapping each other on the back, embracing the Liberal members of Parliament and saying: ‘Hey, you are on the right track. This is the legislation we’ve always wanted?’” The consumers would justifiably say, “Hey, there’s a problem here.”

The insurance industry basically has made a commitment to the Liberal Party. That commitment used to be with the Conservative Party. Let’s be honest about it. But the insurance industry has shown a tremendous degree of flexibility in moving to those who will serve its interests. Of course it makes good sense in a democratic process to have two puppets, because if the people ever get fed up with one of the puppets serving your interest, you have to be able to give them another puppet who will take over. God forbid that a party such as the New Democrats might come in and say: “We’re not going to put up with this crap any more. We’re going to protect consumers.” That is why it is important to have two parties to which the insurance companies can go and be guaranteed that their interests will be served.

The Conservatives may have gone but the protection of the insurance companies remains the priority. They simply invested large campaign contributions in the Liberal Party and this is the payoff. It is the best investment the insurance industry has ever made. For a few hundred thousand dollars, for the 40 pieces of silver, they are getting it back in spades.

The Chair: It was more of a statement than a question.

Mr G. Jones: I was going to say that I am not entirely sure how to respond.

The Chair: I do not think he was looking for a response.

Mr Farnan: The truth speaks for itself.

Ms Oddie Munro: One of the rights the insured has is access to the dispute resolution mechanism. I wonder if you would care to comment in any way as to the advocacy and fairness of that mechanism from the point of view of the professionals involved or mediation or whatever.

Mr G. Jones: My initial reaction is that to the extent it works relatively quicker compared to the courts, if it works relatively quickly and relatively cheaply, then it is desirable, provided it works relatively well. You are going to have to have

good people operating it. The idea, I think, is a very good one. I do not know that I can stress enough that you have to speed up the system. The system is bogging down and I have lost faith in it. I do not know that I can really respond beyond that.

There is one comment I might make with regard to Mr Farnan's statement. In terms of the self-interest, from my own position, at the TTC we sat down and tried to figure out if this was going to be an economic winner or loser, as it were, for us. Quite frankly it is a great unknown because we just do not know how it is going to work. In some areas we are going to get and in some areas we are going to lose; I do not know. As a lawyer, I know that my statement is not a popular one but so be it. Sorry; I went off topic there.

Mr J. B. Nixon: I would like to talk about self-interest for a minute. The Canadian Bar Association—Ontario was in here telling us that its members took 12 per cent of the premium dollars into their pockets. By their statement, 900 personal injury litigation lawyers took in over \$400 million. That is what they said.

The Consumers' Association of Canada was in here. They do not receive money from any of the parties. They certainly do not receive money from the insurance companies or the trial lawyers. They said that from their point of view pure no-fault was the way to go for consumers.

The Consumers' Association of Canada is not alone when it speaks for consumers, because the Consumers Union of the United States has said the same thing. They said, "Pure no-fault is the way to go." Their self-interest, as I understand it, is in speaking for consumers. If it is not, then someone better tell me, but I have never heard that it is not. Their interest is in speaking for consumers and they advocate pure no-fault. I would like to hear your views on pure no-fault.

Mr G. Jones: It is a policy decision on a value judgement. There is a certain appeal to total no-fault. On the other hand if one accepts that there are these tragedy cases, the catastrophe cases—call them that, call them the over-the-threshold cases—I think there is a feeling that you want to do more for those people, that society should do something more for those people. I can live with total no-fault. On balance I would rather not. The over-the-threshold cases are going to take a while to get to court, there is no doubt about that, but that is an acceptable price in catastrophe-type cases.

Certainly in quadriplegic cases or brain damage cases you often will not determine the

extent of the damage for a number of years. It is so much more important when the whole life is concerned in a catastrophic way to look more carefully at that case and perhaps compensate it more than in your—I hate to use the word "average," but some sorts of soft-tissue-type injuries that we see so many of. Total no-fault has some appeal, but I think on balance I would probably say no.

The Chair: Thank you, Mr Jones, for your presentation.

Professor Brown, from the University of Western Ontario; the clerk is distributing Professor Brown's submission. For the next half-hour, we are yours as a committee. I suggest you could divide the time into about 15 minutes for your presentation and allow 15 minutes for some questions, comments and discussion.

1130

CRAIG BROWN

Mr Brown: Thank you for the opportunity to appear before you. I want to start by declaring an association. I have worked with the Insurance Bureau of Canada over the course of the last three years, helping it prepare its submissions on no-fault insurance to Mr Justice Osborne, and more recently on the proposal for choice no-fault. However, I want to make it clear that I appear today on my own behalf as a scholar in the field rather than as a representative of any organization.

I support the legislation. I have no doubt that it is going to have the significant cost benefits that have been touted for it, but I want to speak today about other benefits I see this legislation having. I support it and I would support it even if it were cost-neutral because I believe it is a humane response to the problems of cost and other problems in auto insurance.

The main reason I support it is that it removes obstacles. We hear a lot about what this legislation is taking away. To my mind, it is doing something good in taking away serious obstacles to recovery. Under the present system there are serious obstacles to recovery of prompt, certain and adequate compensation for the most significant losses that are suffered by auto accident victims, their economic losses. This legislation takes away those obstacles and for that reason I support it.

Certainly there are other ways of achieving this goal I have of providing for prompt certain compensation. I have helped the IBC and I have worked independent of it on other ways of doing that. However, this is the proposal that is on the

table and it achieves the goals I have for an auto insurance plan. Therefore I support it although there are some details I would like to ensure are implemented in the regulations. I will talk about that briefly in a moment or two.

Certainly there are tradeoffs in that a no-fault system does mean that most people are unable to recover for pain and suffering even though they will get most of their economic losses. But I believe the values of, the virtues of speed and certainty of payment, provided the economic loss compensation is adequate, are so important, especially when you combine that with the cost savings that will occur, that in my mind there is no contest which is the better system. I acknowledge that is a value judgement, but I am not embarrassed to make it quite plainly as my own value judgement.

It is said frequently that by doing this, by removing fault as a criterion and making compensation available speedily, you necessarily take away something important in terms of the symbols of justice that you treat the guilty and the innocent alike. I want to say that I am not troubled by that phenomenon particularly. I believe it is more symbolic than real for these kinds of reasons.

The previous speaker was honest enough to say that it is pretty much a lottery in the tort system whether you win and how much you will get. I think that way of distinguishing between wrongdoers and innocent people on the roads is very haphazard, to say the least. Even when you do identify wrongdoing, when you step back and look at it, it is really inadvertence, the kind of thing we are all guilty of and just for the grace of God we escape hurting anyone.

Being distracted by children in the back seat, by car phones, by changing the tape or thinking about what you have been doing at the office that day, these are the kinds of things that frequently give rise to accidents. I do not feel ashamed at saying that people who suffer accidents because they have been guilty of this kind of conduct should get compensation along with other people. I think they should.

When you are dealing with the real wrongdoers, you can deal with them appropriately. This legislation, for example, disqualifies drunk drivers from some benefits. So you can make moral statements within the format of a no-fault system and I think that is appropriate. Also, real wrongdoers are still subject to penalties. Criminal penalties and premium penalties will be levied as well in these circumstances.

It is also said sometimes that a no-fault system relieves people of individual responsibility. Well, it does in a sense but no more really than the present system of compulsory insurance where wrongdoers do not pay their own damages anyway; insurance companies, not themselves, pay for them. For those kinds of reasons I am not troubled by what appears to be a reshuffling of the justice norms we have lived by, because I do not think that is really happening.

A related matter that is often raised is the matter of deterrence, that you are going to have, all of a sudden, more accidents because people do not have the same incentives to take care. I do not think that is true. There are already plenty of incentives, regardless of the insurance scheme in place, that encourage people to take care. I do not think this is going to make much difference in terms of going from fault to no-fault.

What will make a difference, however, is that by making insurance cheaper, which is what everyone wants regardless of what kind of system they want, you are going to get more people on the road and you are going to have more accidents. So you are going to have to deal with the safety question quite independently of the insurance system and I think the legislation does that by looking at different licensing and safety measures, etc. I think that it is a red herring to talk about safety in the no-fault debate.

I want to turn now to the threshold briefly, the much maligned threshold that is in this legislation. I should say, first of all, that the goals I have personally for an auto insurance scheme, speedy payment and certain payment of adequate economic loss, can be met in a pure no-fault system so that you can do that without a threshold at all. However, if it is deemed appropriate to have some tort law retained, then I think this threshold that is being used is justifiable.

It is justifiable on two grounds. One is cost and we know we are here basically talking about cost. You have to eliminate a large portion of the pain and suffering payments and a large number of lawsuits in order to achieve savings and also fund reasonable no-fault benefits. So you have to have a tight threshold and that is what this threshold is. I think it is justified on that ground. But it is justified on principle as well, I believe, because it makes a distinction between two types of victim, one who is going to get better and one who is not.

It seems to me that it is appropriate to say to the person who is going to get better: "We will help you get better. Here are basically unlimited rehabilitation and medical benefits to help you deal directly with the pain and suffering you are

temporarily facing," but recognizing that rehabilitation cannot make everyone better, allowing those people who are not going to get better because they are so seriously injured, are permanently injured, to sue. I think that distinction is justifiable if you are going to have a threshold at all.

Finally, I would like to address the question of the adequacy of the benefits. As I have said, the most important thing to me is that accident victims have prompt access to certain compensation, but which is adequate for the most important loss; that is, economic loss. I would like to talk briefly about what this scheme does in terms of adequate economic loss benefits.

First, I think the benefit package that is in the schedule has been unfairly maligned. I do not think it is perfect, but it has been unfairly maligned, first of all, in terms of the \$450. It is not often mentioned that this is tax free, which equates to a gross annual income of between \$28,000 and \$30,000, I think.

Three years ago when Justice Osborne did his study, that figure of \$450 tax free a week would have covered 90 per cent of the wage earners in the province. Now I do not know what the updated figures are but it still has to be a significant proportion, so you are starting from a base of covering the losses of most people.

Second, a lot of other people who earn more than that have pretty good disability insurance. In my own case the \$450 would be more than adequate as a top-up, over and above what I now would be entitled to from my disability insurance. So for a lot of people it is going to be adequate as it is.

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Second, I do not think the rehabilitation benefits are not given their full due in the debate that is going on. I think this opens a whole new world of benefits loosely called rehabilitation, but talks about all kinds of other benefits which are there for the claiming by people seriously and less seriously injured alike. I think there is great scope here even within that amount that is in the schedule.

Something that is crucial to me in supporting this, though, is that this is recognized only as a basic package. I take the minister at his word when he says that insurers are going to be required to offer enrichments and I think there should be a maximum variety of enrichments available for special cases, like the person who might face a business interruption that will take longer than simply his or her physical recovery to get back on track with. I think that indexing

should be available as an option, that increased benefits for long-term care should be available as an option and that benefits for young people who are injured when they become 16 and need a lifetime pension should be more generous as well.

Mr Runciman: It would be nice if you can afford it.

Mr Brown: Yes. Well, I will take that as a question as to whether that is appropriate, what the cost is going to be. My answer to it is, first of all, that we are dealing on average with about a \$200 differential between what people now pay and what the basic package will cost. I think that \$200 allows a lot of scope for people to buy up towards their real full exposure to economic loss and still be better off in terms of what they would be paying if no change was made.

But if it turns out that the costs of these enrichments are indeed prohibitive, then my response would be that you go to a pure no-fault scheme and use the savings from what you would have been paying out in tort suits to make sure that everybody gets a fair shot at least at his or her real economic losses. That is the response I would make to that.

Mr Runciman: One of the comments you are making here is that people want lower auto insurance costs, and I guess we want lower costs in all areas. But you are sort of making some assumptions based on that, I gather, and I am wondering whether, through the faculty of law or through the university, there has been any effort at determining truly how people feel about this.

If you say, "Do you want lower costs?" we are all going to say yes, but I think that that should be aligned with, "Do you want lower costs accompanied by lower benefits and reduced benefits and very limited access to the courts?" I think those kinds of questions would have to be phrased pretty carefully. My own suspicion is that most Ontarians would not be supportive of what is happening in respect to this initiative. I am just wondering if you have done any research through the faculty or through the university to support your position.

Mr Brown: I have not done my own direct research, but there are studies and there is some evidence in the US that people, when placed in the position where they are most likely to give an honest answer about this, tend to opt for prompt payment and certain payment of their real economic losses, rather than face the uncertainty of perhaps a higher amount down the road after a couple of years in court. There are some programs in the US that give people, not an

order, but in other contexts, the choice between immediately taking no-fault benefits or waiting and taking their chances in the tort system. Almost invariably they choose the certainty of the no-fault benefits, provided those benefits are reasonable given their needs.

Mr Runciman: But essentially your suspicion is just a suspicion in respect to how people in Ontario feel about this kind of initiative. Were you consulted at all in the preparation of the legislation or the regulations? Did you have any involvement in that whatsoever?

Mr Brown: No, I did not. I have subsequently written to the minister, but no one consulted me at the time it was drafted.

Mr Runciman: So you do not have any ongoing role with the government or the Ministry of Financial Institutions whatsoever. You made a comment about the \$200 difference, and I guess we have heard testimony from various individuals appearing before us. One was talking about a \$100 difference, one was talking about a \$35 difference.

When you factor in all of the various other elements of this, the tax breaks, the OHIP breaks and a whole host of other hidden taxpayers' subsidies in essence, I am wondering whether indeed you have taken a look at those aspects of it and whether you still support the \$200 figure. We have not had any actuarial studies tabled in the committee to try to indicate to us one way or the other which is factually correct. I would like to hear your comments on that and those impact on it.

Mr Brown: I am not an actuary, so I have to take on faith what actuaries say, but the one thing I do know about actuaries is that they are notoriously conservative and I do not think that actuaries, on behalf of the insurance industry, would be saying that they can save an average \$200 a policy if they cannot deliver on that. They have made their public statement and they are going to live by it. My guess is that the savings may be more and they are leaving themselves a margin, but I do not know.

Mr Runciman: It is not a guess.

Have you ever practised law in the province of Ontario?

Mr Brown: No, I have not.

Mr Runciman: I find that passing strange. You are the second academic we have had before us who is supporting this legislation and being very negative about the tort system in the province of Ontario. That raises some questions

about the number of law schools in the province, in my mind anyway.

The Chair: Just in your mind.

Mr Kormos: I have got to tell you I have to disagree with Mr Runciman. I think it is to this person's credit that he never practised law in the province of Ontario. Quite frankly, I am pleased to hear him say that.

Look, I am under the impression that some of the problem here is that this is neither fish nor fowl. I appreciate what you are saying and I guess maybe what confuses a whole bunch of people all over Ontario is that the Liberals in Quebec run a public, government-run system. The Conservatives in Manitoba run a public, nonprofit, government-run system; the Conservatives in Saskatchewan run a public, nonprofit, government-run system and, my goodness, Social Credit in British Columbia runs a public, nonprofit, government-run system. In the Yukon Territory, I am not aware of their even considering options to the status quo.

But as I say, this is what perhaps is a little bit confusing now. I tell you that the efficiencies you state about the Quebec system we would like to attribute to the fact that it is public, nonprofit, government-run, rather than to the fact that it is necessarily a pure no-fault system.

The propaganda from the Insurance Bureau of Canada—and I am talking about the ads it had in the paper today; anywhere between \$30,000 and \$50,000 of premium dollars are spent on those ads—leaves the impression, as in the past, that increases and premiums will depend largely on the amount of money car insurance companies pay out in claims. The inference that most people are going to draw from that is that the only way you are going to achieve savings on premiums is by paying out less money in claims.

That leads me to the conclusion that the scheme that is being proposed is designed to pay out less money in claims, because it has qualities being attributed to it, that is to say, among other things, the quality of keeping some control, some purported control, on premiums. That is where I have a problem again, because that seems to conflict with people like yourselves who are proponents of a no-fault system for reasons far different from the Liberals here who are proponents of a no-fault system.

You would say that it is a fairer system. But what is fair about this system when it is, as I say, neither fish nor fowl, when all it does is basically enhance the no-fault schedule to what any responsible government would have it anyway? But then, simultaneously, this is not the real

characteristic of this scheme, Bill 68. It is not a no-fault component, because we have had no-fault for over a decade in Ontario. What is done in this new bill and the regulations is some enhancement of the no-fault schedule—no two ways about it, and long overdue.

The real thrust of this legislation is that it will deprive the vast majority of victims, and as it is, innocent victims, because of the nature of the tort system, of any compensation for their pain and suffering. Distinguish that from a no-fault system which would indeed permit compensation for pain and suffering, a very real loss to the person undergoing pain and suffering.

The situation here is one of deception about the nature of the proposal. How can this proposal, Bill 68, be compared with Quebec, which is a pure no-fault, when all this does is utilize and exploit the title of no-fault?

Mr Brown: There are several parts to that question.

Mr Kormos: I appreciate that.

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Mr Brown: First, I think that when you are in a real world which says you have got to keep costs down and you have got to make some choices, I am prepared to make the choice that economic loss is more important than noneconomic loss. Provided that I can be satisfied that everyone is going to get his economic losses, including what now we are going to call rehabilitation and medical, which I think will respond to a lot of the problems that come under the rubric of pain and suffering, then I do not mind dispensing with tort claims for pain and suffering. I do not have a problem with adjusting the priorities in that way.

The other aspect of your comment and your question had to do with public versus private ownership. I think you were out of the room when I mentioned that I have an association there. I have worked as a consultant with the IBC.

Mr Kormos: I was aware of that.

Mr Brown: My view on that question is that I think there are two separate questions which have to be addressed quite independently.

The first one is, what kind of plan do you run? Is it no-fault, is it tort or is it more heavily one or the other? That is what I have addressed principally today, and it is quite clear what my views are on that. To my mind, that is the most important reform and who runs it is secondary. If you had a government scheme that just ran the

status quo, I do not think we would be any further ahead.

Then the question is, once you have got a no-fault scheme, who should run it? There is no secret that I admire what they have done in Quebec; I think it is a good scheme. At the same time, I do not think there is any evidence to show that the private sector cannot administer this kind of scheme in the public interest, properly administered, properly monitored, with the proper regulations. This is one of the areas I agree with Justice Osborne on. The market in Ontario is competitive and you can expect the forces of competition to keep the prices down and to maintain service.

Basically, at that level anyway, I think it is a debate between competition and monopoly, and the competition aspect gets my vote for now. At least the industry should be given a chance to run it, because if we were to change right now, it would be tremendously disruptive and I think that there is no evidence to justify that disruption.

Mr McClelland: Professor Brown, thank you for your attendance and submissions today. I did not notice whether you were here for the presentation of Messrs Rempel, Sr and Jr. Were you here for that presentation?

Mr Brown: I just got the last part.

Mr McClelland: If I could, Mr Chairman, with your indulgence, I am going to take a moment to respond to the discourse of my colleague from the Conservative Party in part and lead in to a question in part on the submission of Messrs Rempel.

I want to say to my friend Mr Runciman that we may agree to disagree in terms of our evaluation of proposals with respect to legislation, but I find it difficult to equate that to impugning someone's moral integrity in terms of whatever decision he makes ultimately with respect to how he deals with an issue before this committee or before the House.

The Rempels made a presentation and Mr Rempel Jr in fact said in his submission: "My friends won't have an opportunity to recapture what might have been. Isn't that why we have insurance?"

In your submission, you make a point and say that the loss of pain and suffering is clearly what is being given up on the cost side, on the downside of the ledger, but in response to that, there is on the other side of the ledger a different set of benefits that is being given. You went on to say that there are two types of people, those who can be rehabilitated and those who cannot.

I also draw to your attention that inasmuch as both Mr Rempels said that what they want is an opportunity to function again in society—that is ultimately what they want—the pain and suffering component of the tort system does not provide that and it does not begin to compensate for what a person has lost in his life.

I suppose I am asking you, sir, if you would be good enough to expand on what you were saying here in terms of “different does not necessarily mean less.” We clearly are giving up in some cases an element of recovery for pain and suffering, but none of us can realistically or reasonably say that this would ever compensate for the situation outlined in a very compelling and, as Mr Runciman said, heartfelt presentation by the Rempels.

That is not what this is all about. It is not responding to that emotional compassion that we all feel for individuals like those, thousands of them across this country, across this province. We are talking about putting people as much as possible back into a functioning role in society, the very thing that Messrs Rempel said.

I would like you to comment, if you could, about the “different does not necessarily mean less” aspect, to use my own words, where the rehabilitation components of the proposal offset, in my opinion at least, the loss of the element of pain and suffering litigation.

Mr Brown: I cannot really add much to what you have said, except to say that the way I read the entitlement provisions for rehabilitation I see these as providing a tremendously widened opportunity for accident victims to have access to the kind of treatment and therapy and other associated things which will help them either to rehabilitate or to cope with their inability to rehabilitate. Directly addressing the specific problems of disability in that way is much better, in terms of my own moral view, and it is certainly more efficient in terms of the use of dollars, than simply saying here is \$20,000, \$50,000, \$200,000, as solace for that.

I am not saying it is bad to give somebody money. I am simply saying that when you have limited dollars to spend and when you have serious doubts, as I do, about the way in which we discriminate between those who are entitled and those who are not because we do not have much faith in the fault-finding system, I think you are justified in dealing with it in the way in which the bill does.

Mr J. B. Nixon: I would like to go over some ground that Mr McClelland went over, dealing with the specific situation of the head-injured.

My understanding is that the mental disability of the head-injured which flows from a physical injury is permanent in nature and continuing. Is it your view that the head-injured would exceed the threshold?

Mr Brown: You mean a head injury that is attributable to another physical injury?

Mr J. B. Nixon: Yes.

Mr Brown: I assume so, if it is permanent; yes.

Mr J. B. Nixon: Having heard that, I think we have to get this clarified, because we all agree that the Rempel situation is very, very troublesome. We have heard Mr Rempel, who is not a lawyer and who has not worked on this system or these types of systems, say he does not believe that his son's injuries would have exceeded the threshold. We have now heard Mr Brown say that he would exceed the threshold. Clearly, that is important, and clearly I think it would go a long way to reducing the concerns of Mr Rempel or any head-injured person if they wish to embark on a lawsuit.

Ms Oddie Munro: Would you care to comment on the dispute resolution mechanism as an alternative to court proceedings, taking into account that it is on the no-fault aspect of the bill?

Mr Brown: I think it is desirable. It depends on the details, which I have not seen. It depends on the personnel as well, but I think it is very promising.

One of the things we recommended when I worked with the Insurance Bureau of Canada on smart no-fault was a system of dispute resolution which I think has a lot to commend it. Among other things, it gave claimants the option of a fast-track arbitration kind of process or, if they did not like that, if they wanted the good and the bad, the symbolism and the delays of the court system, they could resort to that if they wanted to. It was their choice.

But I think arbitration and associated alternative dispute resolution is very desirable.

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The Chair: Thank you very much for your presentation.

I will not adjourn the committee yet. We have two issues we have to deal with. One is that Mr Ferraro wants a point of clarification, and there was a motion by Mr Runciman yesterday that I would like to deal with, if possible.

Mr Ferraro: I do not want to confuse the committee, so I would like to expound on what I said last night about the mediation process. Mediation is mandatory for both sides, the

insured and the insurer. If mediation is not acceptable to the insured, then the insured can go to either arbitration or the courts. It is not at the discretion of the insurer at that point.

The Chair: Mr Runciman, you had a motion. In talking to the clerk, I do not necessarily think we have to deal with it by notice of motion. I think we had some discussion in the subcommittee that we would deal with, on a case-by-case basis, requests for remuneration to cover such things as airfare, hotel and meals upon receipts being provided.

If we have agreement within the committee—it is up to you, but I do not think we necessarily have to deal with it by motion. There are certain things that the Board of Internal Economy will allow us to cover as a committee, but I will let you speak to that.

Mr Runciman: That is fine. At this juncture I was going to ask you to delay it until we had determined what the expenses were and then make a decision perhaps at that point—I am not sure—but if you want to deal with it through the subcommittee or whatever mechanism, that is fine.

The Chair: The discussion we had at the subcommittee level was that we, with direction from the clerk, would take a look at what we were allowed to remunerate presenters for. The clerk informs me that we can reimburse those individuals for the normal expenses of airfare, hotel, taxis, meals, upon receipt. I would still like to deal with it on a case-by-case basis as opposed to making just a blanket statement. If you are prepared, and we have an agreement within the committee, to cover Mr Nader's airfare, hotel, meals and taxi, upon the receipts provided by Mr Nader, we could handle it that way.

Mr J. B. Nixon: I was just going to agree with Mr Runciman to the effect that, let's wait until we get the bills.

The Chair: If I am not seeing any objection, once we receive the bills from Mr Nader we will then reimburse.

Mr J. B. Nixon: No, I do not think that is the understanding. I think the understanding is to have Mr Nader submit the bills and then the committee will make the decision. Is that not what it is?

Mr Runciman: I have no real difficulty with that. I am just talking about reimbursing him for reasonable expenses. We will look at it when they are submitted. If there is a disagreement, I guess we will deal with it at that time. I have no

problem with delaying it until such time as we receive the costs.

Mr McClelland: I am going to ask for some information and then comment. What is our position or policy going to be with respect to every other person who presents to this committee?

The Chair: That is to be determined by the committee.

Mr McClelland: I will go on the record and say, quite clearly, that I do not think any individual, regardless of who he or she is, whether a name or a no-name or an individual who comes from this province, ought to be treated in any different fashion than anyone else. If we are going to have a policy of picking up expenses, then I think it is an area where we should tread very carefully.

There are people who have come today from London, Ontario, to present or from St Catharines and so on. We could continue that; we could trot out the list. I am just saying that from a philosophical point of view I have a great deal of difficulty with treating someone who happens to be a well-known individual any differently from the ordinary citizen of this province. Quite frankly, I am going to go on the record as saying I am opposed, unless we develop a policy with respect to each and every person who is—

The Chair: As I understand it, there were specific names submitted by representatives of the three parties and we, in some cases, had extended both verbal and written invitations for individuals to appear. The clerk has informed me that it has been past practice, when that has happened, that committees would cover reasonable costs. I am just telling you what other committees have done.

Mr Nader was one of those individuals whose name Mr Runciman had submitted as a witness so that we would request his appearance. That has taken place. There have been other witnesses we have asked to appear before this committee. They may or may not request a reimbursement for their expenses.

So there is a policy. I do not think we are treating anybody different. It is just that the subcommittee, in terms of asking for individuals to appear before the committee, the practice in the past—and I am just telling you what the practice in other committees has been—is that where the committee asks for individuals to appear, it normally covers reasonable costs.

Mr Runciman: Can I interject here, because I think we are going to be going on ad nauseam on

this? I would like to see if perhaps we can take these—I think they are going to be very limited indeed—requests to the subcommittee and it can come back with a recommendation. If the committee wants to support it, fine. If it does not want to support it, so be it. It gets out of this kind of continual repetition and debate.

The Chair: I am going to allow Mr Kormos and Mr McClelland to close it off.

Mr Kormos: I do not understand the difference between letting somebody submit his bills and then we can decide whether or not to pay them—I guess that is to control against exorbitant expenditures, staying in—what is an expensive hotel?

Mr Velshi: The Royal York.

Mr Kormos: Staying at the Royal York as compared to staying at the Westbury, where I know Mr Nader is staying. Holy cow. No disrespect to the Westbury, but holy cow.

Mr Velshi: We are on TV.

The Chair: He knows that.

Mr Kormos: That is what I said: holy cow; the Westbury.

In any event, in view of the fact he stayed at the Westbury, I am confident his account would be modest. But we had a choice of whether to extend the cities in which we sat throughout Ontario, because this committee discussed and it was proposed to this committee that we sit in an eastern Ontario community, perhaps Brockville or Kingston, plus Hamilton. Those two communities were proposed and London was alluded to. There would be some cost; no two ways about it.

But it is a double-edged sword because otherwise those people have to travel to Toronto, other than in the four communities we are sitting.

So which way do you want it? You cannot have it both ways. You cannot restrict the number of places that you sit and then tell people, "Too bad, so sad, about the costs you incur in coming to Toronto." In view of the decision the committee made to seriously limit the out-of-town sittings to a mere four days plus the option of two additional full days in a mere four communities—Ottawa, Sudbury, Thunder Bay and Windsor—and the committee having chosen to restrict where it goes to see the people when it is incumbent to pay for reasonable expenses, I trust that a letter will be sent by the clerk to Mr Nader, among others, inviting those persons to send in their receipts. Otherwise, how they are going to know to do it?

The Chair: I am going to take Mr Runciman's suggestion and let the subcommittee deal with it, with a recommendation back to the full committee. It is probably the best way to handle it. If I do not see any disagreement with that, I think it is the route we should go.

Mr Kormos: I am not quite finished. I am sure Mr Nader got here and had his 30 minutes. That was big of us; Mr Nader travelling all the way he did to be permitted a mere 30 minutes, not just for the submission but for the questioning as well. Surely, in view of the fact that he and the public were shortchanged so significantly, we cannot expect him to bear some not insignificant cost.

The committee recessed at 1210.

AFTERNOON SITTING

The committee resumed at 1400 in room 151.

The Chair: I am going to recognize a quorum and I am going to invite John Reiersen from New York state to come forward to the table before us. There is no written submission. He will give us a copy of his remarks, which the clerk will make copies of, or get copies to us after the remarks. I have explained to Mr Reiersen that he has half an hour and that the best way to utilize that would be 15 minutes for presentation, if possible, and 15 minutes for some questions, comments and discussion. Sir, we are in your hands.

JOHN REIERSEN

Mr Reiersen: I apologize for not having a prepared statement, but it was a holiday in the United States yesterday and my secretary did not come in. I will fax a copy of my prepared testimony tomorrow.

I am currently senior vice-president of Robert Plan Inc, which is a medium-sized United States insurance company. We do not do any business in Canada, nor do we have any plans to do business in Canada at the moment. I joined the Robert Plan corporation in July 1989. For the prior 25 years, I was an examiner with the New York state insurance department.

At the request of the Ministry of Financial Institutions, I have reviewed the proposed Ontario motorist protection plan and I am happy to appear before you with some comments on the proposal.

Prior to being with my present employer, I was chief examiner in the property and casualty bureau of the New York insurance department. Since 1974, I administered New York's no-fault law and was responsible for enacting many changes in that law as well as other measures aimed at reducing the cost of auto insurance in New York.

On 20 April 1989 I gave extensive testimony on New York's no-fault experience and on proposed automobile insurance measures to the Ontario Automobile Insurance Board. I am pleased that the proposal before you today incorporates many of the measures adopted by New York to stabilize its automobile insurance rates; namely, the verbal threshold and simplified arbitration provisions.

Since 1977, New York's automobile insurance rate increases have averaged less than five per cent per year, a rate substantially below the consumer price index.

Overall, I must commend all involved in drafting the proposal for automobile insurance reform in Ontario. I believe the proposal will add stability to Ontario's automobile insurance product. The proposal that I reviewed addresses most of the coverages contained in the automobile insurance policy. It enacts cost-containment measures in all areas. It provides for a more efficient product, delivering more money to the policyholders. It has a better regulatory scheme for making sure that rates remain stable and it provides a higher level of benefits to most accident victims.

You have borrowed some ideas from other jurisdictions but in many areas you have forged new product developments. I am particularly impressed by your proposal for property damage, liability insurance and your optional exclusion of specific drivers from the household coverage.

The proposal, overlaid on an already excellent automobile reparations system in Ontario, coupled with regulatory oversight, should give Ontario a system that will become the model for other jurisdictions. The enactment of a tough verbal threshold will add stability to the loss data underlying automobile insurance rates.

I have asked to provide some input on the operation of New York's verbal threshold and on the success of New York's arbitration/conciliation system. I also cannot resist making some comments on the proposal.

When New York adopted no-fault in 1974, its first threshold defined serious injury as the accumulation of \$500 in medical bills. This dollar definition of serious injury proved to be very ineffective in reducing the number of tort actions by the 85 per cent that was needed in order to justify our giving a 16 per cent reduction in rates.

In fact, the no-fault benefits provided a convenient mechanism for plaintiffs' attorneys to meet the \$500 threshold. While the frequency of tort cases was reduced from 2.78 per 100 policies to 1.41—that is, a 50 per cent reduction in cases—such a level of reduction was similar to no-fault states which did not restrict the right to sue at all; for example, Oregon.

New York adopted its verbal threshold definition effective 1 December 1977 as a part of the Automobile Insurance Reform Act of 1977. That act, which is similar to the proposal under consideration in Ontario, contained a number of measures aimed at reducing costs, loss costs and

therefore premiums in response to a severe rate crisis that New York had in 1975 and 1976.

The verbal threshold definition has steadily reduced the bodily injury tort claim frequency to 0.57 per 100 policies, meaning an overall reduction of 80 per cent from the 1973 pre-no-fault frequency level. Put another way, total bodily injury cases due to auto accidents in New York has decreased from approximately 146,500 in 1973 to approximately 35,000 suits today.

Since 1981 the suit frequency has remained stable at about 0.6 per 100 policies. The stability in claim frequency, coupled with other cost-containment measures, such as medical fee schedules, elimination of duplicate benefits, a photo inspection law and revised arbitration procedures, has kept New York's automobile insurance rate increases below five per cent per year since 1977.

The verbal threshold contained in section 231a of the Ontario proposal is a lot stricter than the New York threshold. To meet the threshold definition in your proposed statute, you must be permanently and seriously injured. In addition, the injury must be to an important bodily function. Under the New York verbal threshold, you can also meet the definition of serious injury by having any fracture, by having a significant limitation of use of a body function or system—note I said “significant”; I did not use the word “permanent”—or by being disabled for 90 days in the first 180 days after the accident. Those are far less serious events than I contemplate under your proposed threshold. The Ontario verbal threshold should result in the elimination of a greater percentage of tort cases as compared to New York's and should be subject to less interpretation problems.

I also note that under the Ontario proposal the bar to suit is for both economic and noneconomic losses. In New York, injured persons may not sue for basic economic loss—that is, the first \$50,000 of no-fault benefits—and suit for noneconomic loss is limited to cases where such person is seriously injured. However, in New York you can sue for economic loss that exceeds the no-fault level of \$50,000 or the wage-loss level of \$1,250 a month, even if you are not seriously injured. That is a significant difference between your statute and the New York statute.

I believe you might want to permit a cause of action for economic losses that exceed the no-fault level of benefits so that the injured party and any insurer providing additional no-fault benefits may have a source of recovery for such benefits paid.

The level of no-fault benefits provided on a guaranteed basis in your proposal is more than an equal tradeoff for the restriction on the right to sue. So I think the act is very constitutional. I wish I could have convinced the New York Legislature to adopt just 20 per cent of the level of benefits you have provided for medical and rehabilitation.

I have some observations on your level of no-fault benefits. I did not see the need for wage-loss benefits of \$185 a week for students, unemployed persons or retirees. This benefit unnecessarily adds to the cost of the coverage. It would be more economical to permit such a person to sue the tortfeasor for any demonstrable losses without having to meet the serious injury threshold.

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While the generous level of benefits for medical care and rehabilitation of \$500,000 and long-term care of \$500,000 are laudatory, they certainly will add significantly to the cost of automobile insurance coverage. The Pennsylvania catastrophe fund and the New Jersey unsatisfied claim fund are both bankrupt by several hundred million dollars due to the need to fund these megabenefits through the automobile repair system.

I would suggest that benefits over \$100,000 per person, or some other level, be funded by the government in order to keep down the cost of automobile insurance. It is unclear from the material provided to me whether commercial vehicles, public liveries or motorcycles are covered under the Ontario proposal. If commercial vehicles are included, then loss transfer against the insurer of the at-fault vehicle should be permitted.

Section 239b appears to provide for loss transfer for certain classes of vehicle. Motorcycle occupants should not be covered for no-fault benefits but should provide such benefits to pedestrians they injure.

I also notice that section 232 of the act provides a priority of payment where the coverage follows the person. This is a departure from New York, where the coverage follows the vehicle. I just have a personal preference. You could go either way. If the coverage follows the vehicle, at least the insurer paying the benefit was the insurer of one of the vehicles involved in the accident.

Subsection 232(8) mandates that an insurer furnish benefits pending resolution of a dispute between the insured and an insurer. Even though I have only been in the insurance business for six

months, I am beginning to think like an insurer. Although the provisions of section 242 seek to ameliorate this requirement to the level of no-fault benefits in accordance with the last offer of settlement by the insurer in mediation, I believe this provision will encourage malingering.

If an insurer has conducted a medical examination and such examination determines no further disability, what level of benefits should continue to be paid? To require an insurer to pay full benefits until an arbitrator decides the issue will result in unnecessary payments in cases where the person is in need of no further treatment, since either the arbitrator will award benefits up to the date of arbitration as a matter of equity, or the insurer will be required to collect money back from the insured—not a very easy task. This provision will add unnecessary costs to the system.

The two per cent interest penalty and the special award provisions of subsection 242d(10) provide an adequate remedy against improper acts of an insurer.

The New York no-fault law, since inception, has provided for the option of insureds to submit any matter involving the payment of no-fault benefits to binding arbitration. After experimenting with many different forms of arbitration mechanisms, we adopted in New York our present system in July 1988. The current system of arbitration involves the initial submission of disputes to the insurance department for conciliation by department examiners who serve as conciliators.

The conciliation procedure has been in place since 1978 and has been successful in conciliating about 40 per cent of the 10,000 to 12,000 disputes submitted annually since that time, usually within a two- to three-week period. If conciliation is unsuccessful, the dispute is submitted to either the insurance department, for disputes involving the medical fee schedules or for disputes involving issues under \$400 when a coverage issue is not involved, or to the American Arbitration Association, for all other disputes.

Full-time paid arbitrators who are picked by a committee consisting of bar association representatives and insurer representatives resolve all disputes. If the case involves medical disputes, the arbitrator may submit the issue to a health service consultant whose name is on a list provided by the American Arbitration Association.

The current system contains an appeal mechanism within the arbitration system known as master arbitration. The current system is working very well, with prompt, informed and unbiased decisions being the rule. I think we have gone from insurers losing 90 per cent to insurers only losing 70 per cent.

The Ontario arbitration system is similar to the New York system, since it provides for a separate mediation process prior to submission to an arbitrator. Arbitrators are appointed with the advice of the Accident Benefits Advisory Committee. Arbitrators have the availability of a medical and rehabilitation advisory panel for consultation on medical disputes.

The major differences between the New York and the proposed Ontario arbitration system are the ability of an insurer to submit disputes to arbitration and the mandatory feature of the mediation process in your proposal. I surmise that the purpose of both features is to enable insurers to get a prompt adjudication of disputed matters, since they are not permitted to cut off benefits prior to resolution of the matter. I have previously commented on this issue. Absent this issue, I see no reason to permit insurers the option of arbitration, other than cutting off benefits promptly.

I have several suggestions to make relative to the proposed arbitration procedures. I believe there should be a filing fee for mediation or arbitration both by insurers and insureds. I would suggest a fee of \$50 for insureds and \$100 for insurers. This fee will discourage frivolous arbitrations, especially by attorneys representing health service provider assignees.

Health service provider assignees proved to be a thorn in the side of the insurance department ever since we adopted arbitration procedures. A whole field of law grew up where attorneys would represent doctors and hospitals and file no-fault benefits in order to collect an attorney's fee and interest for the health service provider. By requiring a fee, you restrict somewhat that activity.

The statute should define the status of a health service provider assignee. Is that person entitled to file for arbitration, or must the injured party file on his own behalf?

Decisions of the mediator and arbitrator should not be res judicata on either party's third-party tort action. In New York, many plaintiffs' attorneys boycott arbitration for fear of jeopardizing their clients' tort actions. Since arbitration is against an insurer rather than the tortfeasor, the arbitrator's decision does not bind

the tortfeasor. So in arbitration in New York, insurers cannot be jeopardized by any decision, but the injured party can if that injured party has a concurrent tort action. You might want to incorporate in the statute a provision that the decision of the arbitrator is not res judicata on any outstanding tort action.

Should you decide to adopt a nonbinding effect on the arbitrator's decision, I suggest that arbitration be made the sole remedy for the resolution of no-fault disputes. The no-fault law that results, should the Ontario act be adopted, represents a true no-fault law with a generous package of guaranteed no-fault benefits and a limited right to sue. It should be very successful in containing costs. All involved should be commended for the tort reform, highway safety measures, the elimination of premium taxes—it is a lot of political courage there—and the property damage coverage measures contained in the bill.

Cost containment in the automobile insurance product cuts across all coverages and involves many segments of society. You have recognized this fact and have produced a bill that should stabilize Ontario's automobile insurance rates for many years into the future, and I wish to congratulate you on a nice piece of work.

The Chair: Thank you for your presentation. I have Mr Kormos, Mr Nixon and Mr Runciman, four minutes.

Mr Kormos: Welcome to Canada.

Mr Reiersen: Thank you.

Mr Kormos: You should know, and so I am going to tell you, that the Minister of Financial Institutions (Mr Elston)—Ralph Nader was up here yesterday.

The Chair: Today.

Mr Kormos: Yesterday. Holy cow, Mr Chairman.

Ralph Nader was up here yesterday commenting on this—indeed he was up here in November 1989—and was critical from a consumer's point of view, Nader being, gosh, I guess in North America one of the leading consumer advocates for a long, long time.

He was up here in November and, as I say, was up here again yesterday. Even after he was up here in November, you would not believe the criticism that he got and we in the opposition got for making reference to Ralph Nader. Why, the government and the Minister of Financial Institutions (Mr Elston) said: "You guys are bringing an American up here to give you advice. You guys are bringing in a person who is not even a

Canadian." Xenophobia just ran rampant through the hallways of Queen's Park.

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I had to think about it. I thought: "My gosh. Is the minister right? Is it somehow un-Canadian to bring an American up to talk about this Bill 68?" That is what the government said about Ralph Nader: "He's an American. How could he possibly know about the Canadian or the Ontario experience? They do things differently in the United States." The government was creating that very distinct impression, that they do not have things like universal OHIP coverage and they do not have things like GSTs foaming at the mouth out of Capitol Hill.

I want to give you this opportunity to indicate how you would be any different. Ralph Nader is an American and there is nothing to suggest that he is not. I presume that not only did you travel up here from the United States of America today, but indeed that you are an American. To be fair to you, so that you do not suffer from the same pall that was cast on Ralph Nader by the government, I wonder if you would explain to us if you are any more or less American than Ralph Nader is.

Mr Reiersen: I noticed as I was walking around before this session that this building was designed by a person from Buffalo.

Mr Kormos: And burnt down by—

Mr Reiersen: It has caused quite a controversy, so I guess it is continuing.

I think the automobile systems are very similar. The only difference is OHIP. We have medicare which provides virtually the same coverage for retired people. I do not see much difference in the auto reparations systems. You have accidents. Cars need to be repaired. The tort system is one that does not return a great percentage of the dollar, or as great a percentage as should be returned, to the auto accident victim. It requires an awful lot of money to be spent on investigative and legal expenses. In those respects, the systems are similar.

Mr Kormos: God bless you because you have just enhanced Ralph Nader's credibility. People were starting to wonder whether the government was right and that indeed we should not be listening to an American.

Mr Reiersen: I think we should listen to Ralph Nader.

Mr Kormos: You should also know that back in 1987 the Premier (Mr Peterson) of this province, faced with an incredible crisis about cost of auto insurance, in the crassest political manner announced three days before a general

election that he—not just anybody but that He—capital H—David Peterson—had a very specific plan to reduce auto insurance premiums. Now it was a little bit of a secret. He was not spilling the beans or letting the cat out of the bag, presumably until after the election. Sure enough, there was no bag and there was no cat. There was nothing to be told after the election.

This has dogged the Premier ever since September 1987. People have been calling him a liar, a prevaricator. Honestly, people have been calling him that, people all over Ontario, on the streets, in their homes and in the shopping plazas. The government has fumbled around. It dumped a multimillion-dollar rate-setting process. Now there is a so-called reform that even people such as the Attorney General (Mr Scott) of the province, a member of the government, say will generate different benefits, worse benefits, whatever word you want to use. When the Attorney General, who is a lawyer and who is touted by the Premier as one of the finest legal minds inter alia in the province, says this will certainly create different, worse benefits, I am a little bit disturbed. Should I be concerned that the Attorney General would assess the plan in such a way?

The Chair: I am going to interrupt and state that most of that was commentary and move on to the next questioner.

Mr Kormos: So be it, Mr Chairman. You do what you feel is appropriate.

Mr J. B. Nixon: Mr Reiersen, I was interested in your comments on whether or not an arbitration decision should be final. You may or may not know that under the proposed legislation the consumer, being dissatisfied with a mediation result, can choose to proceed to arbitration or can choose to proceed to court to have the court review the decision. Similarly, if they proceed to arbitration and are dissatisfied with the arbitration decision, they can proceed to have the court review it, as I understand it, or they can proceed to have—

Mr Reiersen: The commissioner, I think.

Mr J. B. Nixon: The commission, I think it is the superintendent—I am not sure who but someone in the commission—review it. Is that at variance with what you were suggesting when you were suggesting that—

Mr Reiersen: It is similar to what we have in New York. In New York you either go to court or you go to arbitration, and part of the arbitration process is conciliation. We do not have mandatory conciliation. The New York City bar associa-

tion studied New York's arbitration mechanism and no-fault. They concluded that if we eliminated this res judicata issue it would be a more efficient system. If you have a fair, equitable system of arbitration, that should be the sole remedy, similar to workers' compensation.

Mr J. B. Nixon: Am I correct that I understood you to say that the premium rate increase over the last 10 years has been five per cent per year?

Mr Reiersen: Twelve years.

Mr J. B. Nixon: The last 12 years.

Mr Reiersen: Yes.

Ms Oddie Munro: You mention that the level of benefits in the Ontario model would be more than an adequate tradeoff to the right to sue in the New York model. Is that because many of the incidents that would be dealt with under the benefits and the income replacement scheme would be similar to the case presented in the courts in the New York model? Do you feel we have taken into account most of the reasons a client would seek representation and paid either a monetary or a service level for those kinds of reasons?

Mr Reiersen: Yes. I think virtually everyone injured in an auto accident in Ontario under this bill has all of his medical bills, rehabilitation, home care; everything seems to be covered. There is a very generous wage-loss package, and if that person has any permanent injury he still has a right to sue.

The only thing being eliminated is the pain and suffering during recovery, and I think the theory of no-fault is that the whole system works better if that particular aspect is covered through putting that person in essentially the same place he would have been in had he not been injured, giving him a wage replacement, giving him adequate opportunity to get occupational therapy should he need it, and rehabilitation.

Mr Runciman: I am sorry that I missed the first part of your testimony. What year did you bring this system into New York state?

Mr Reiersen: No-fault started in 1974 but the verbal threshold was enacted on 1 December 1977.

Mr Runciman: On the dispute resolution process, which you say is quite comparable to what is proposed in this bill, what has that meant to the New York state bureaucracy? How many bodies are employed, if you will, at state level to operate this process?

Mr Reiersen: At the state level there are approximately 16 or 17 people involved in the

arbitration process. There are about eight conciliators and two arbitrators and then there are supervisors and support staff.

Mr Runciman: So in the total package you are only talking about 25 to 30 people who are involved in this whole—

Mr Reiersen: The American Arbitration Association also has expenses in conducting the arbitrations where the conciliation is not successful. The entire cost of the system runs about \$2.5 million. That includes the American Arbitration Association expense and the insurance department expense.

The Chair: I have a quick supplementary from Mr McClelland, or it might have been answered.

Mr McClelland: I think Mr Runciman asked this question. Just for comparison, how many people are driving in the state of New York? How many drivers are there?

Mr Reiersen: I think there are nine or 10 million licensed drivers. There are about eight million vehicles.

1430

Mr Runciman: You mentioned earlier about the tax subsidies and you described it as being politically courageous. I guess I would describe it as just another element of the shell game that has been undertaken by the government with respect to talking about stabilization of rates, but it is really taking it out of another pocket in essence. In effect it is still costing us dollars. I gather New York state has not embarked on the same sort of effort to dupe the taxpayers of that state with respect to the real cost of automobile insurance in that jurisdiction.

Mr Reiersen: I do not think I would have ever suggested it. I might have suggested it but it would have been quickly dismissed.

Mr Runciman: So you are not endorsing it even though you described it as—

Mr Reiersen: No, never eliminate a revenue measure.

Mr Runciman: Oh, okay. With respect to comparisons with what is being proposed here, the income displacement and the fact that under this bill the no-fault benefits are only going to be paid after all the other income continuation benefit plans are exhausted, is that the same sort of plan in effect in New York state?

Mr Reiersen: Yes.

Mr Runciman: You have had no difficulties with that from a political point of view?

Mr Reiersen: No.

Mr Runciman: That is surprising.

Mr Reiersen: Actually, you want to make sure that the injured party gets paid once. I am not concerned who pays it, whether it is paid by the auto system or the supplemental health system or the employer. The important thing is that the person not collect twice because that encourages malingering, encourages being involved in accidents to collect double benefits.

Mr Runciman: I understand. What do you do about prices in New York state, with rates? Are they regulated?

Mr Reiersen: Automobile insurance rates are very highly regulated. They are subject to prior approval by the commissioner. No insurer can change a rate or file a rate or use a rate without getting specific approval.

Mr Runciman: Do you have caps on return on equity of insurance companies? Is there some sort of caps on profit margins? How do you deal with that?

Mr Reiersen: I am not an actuary. There is an excess profits law in New York. It defines an excess profit as over 18 per cent return on equity.

The Chair: I am going to have to interject here and thank you very much for your presentation.

Mr Reiersen: Okay.

Mr Runciman: Could I ask one relevant question, really from the perspective, I guess, of the subcommittee? If the gentleman is appearing, I am wondering, is New York state covering your cost to travel here and appear before the committee or is there some commitment to cover your expenses that I am not aware of?

The Chair: I think he is probably going to be treated in the same way Mr Nader is going to be treated in terms of expenses because it was an invitation extended.

Mr Runciman: Okay. I am glad to hear that.

The Chair: Next is the Heritage of Children of Canada. It is exhibit 35. We have copies if you have left your exhibits in your offices. It is about a one-and-a-half-page letter and I know the gentleman would like to expand on that. I would suggest that with our half-hour time you could take about 15 minutes for presentation and then allow 15 minutes for some questions, comments and discussion, if that meets with your approval.

HERITAGE OF CHILDREN OF CANADA

Mr Weingust: I will probably be less than the time allotted to me, so I will be happy to invite all the questioning you may have in this regard.

First of all, I am a lawyer and I am the legal adviser of an organization called the Heritage of Children of Canada, consisting mainly of grandparents who have objects with regard to their grandchildren, and generally to promote advancement of education with respect to the elderly.

The organization is concerned with Bill 68 on two avenues. One is in relation to the elderly and the second is in relation to children. These seem to be the forgotten people in this particular legislation.

Dealing first with the elderly, we have people who are either retired or unemployed and have no income other than the income provided to them by way of pensions and other benefits. They also find themselves as people who are probably very prone to accidents and even minor accidents which take a very long time to heal. The legislation leaves these people with very little compensation with respect to injuries that may take years to heal, yet not be in the category of serious and permanent injuries.

There are also psychological injuries which are trauma injuries suffered by the elderly as well. Again, that is eliminated from the proposed legislation. Being either retired or unemployed, they will receive little or no compensation for the loss of income benefits under the legislation as well.

They are also concerned about the children of this province. I think if you add the children under the age of 16 together with the elderly, we are talking about perhaps more than 60 per cent of the population. With the ever increasing elderly in our society, we can expect that average to go up quite considerably. What we have here is some sort of legislation that is going to eliminate compensation to the vast majority of Ontario residents. We find this rather draconian in the sense that we are depriving these very people of compensation they would otherwise be entitled to under our present system.

Children under 16 years of age have received no compensation of any nature under this proposed legislation. At the present time we have what are considered infant settlements in the province of Ontario, where settlements are made either through negotiations between lawyers and adjusters or by way of court awards. The interesting part of these infant settlements is that they comprise rather huge quantities of money.

I have taken the opportunity of checking with Mr McGann, the accountant of the Supreme Court of Ontario. This week he has advised me that there are now moneys paid into court on behalf of infants in the sum of \$215,134,123.46

as of 30 September 1989. Ninety per cent of that money is in relation to settlements that have been made in regard to accidents on behalf of infants. The other 10 per cent deals with incompetency.

If this proposed legislation goes through, we are going to have a situation where infant settlements in the province of Ontario will be gone. The children of this province will receive nothing. The \$214 million will be depleted and will not receive any further moneys except for accidents with serious and permanent injuries.

We find that this legislation, leaving both the elderly and infants out in the dark, is something that certainly this organization is violently opposed to.

We take a situation where two grandparents take three of their grandchildren out for a Sunday drive. This is not hypothetical; this is problematic. A negligent driver goes through a red light, smashes the car of the grandparents and the grandchildren and the end result is that no one suffers any permanent or serious injury. We are left with a situation where the negligent driver, who may be off for as long as a year, receives up to \$450 per week and the grandparents and the grandchildren receive very little.

There is provision I understand for the \$185, but I understand even that in itself would hardly compensate for what you are taking away from the elderly and the children at the present time. Even for people entitled to the \$185, the proposed legislation as I understand it will only be during the period when they are prevented from engaging in their normal activity, which brings us to the question of what is their normal activity. Will this be a matter that will have to be settled and fought over in court in any event?

1440

I can tell you now, as a lawyer, that at the present time there are court actions, two of which have been reported in Ontario Reports this week, where under the present system of no-fault benefits people who are receiving only \$140 per week are fighting with their own insurance companies on the basis of disputes about whether they were prepared to go back to work or whether they should have gone back to work.

This legislation now, making the amounts go up to \$450, is going to put them in the spirit of fighting those particular claims even more. If they are willing to fight for \$140 and take these people into court to get their present no-fault benefit of \$140, we can just imagine what they would do in regard to saving the \$450 a week.

We believe that the litigation is not going to be lessened; it is going to increase. The right to sue,

I submit, is an inalienable right of a democratic society and is historically rooted in this country from common law and the Magna Carta. To take away that right which is historically entrenched and socially fair is an aberration. To take away that right is to take away the right of the common man to stand up to large corporations, institutions, governments and even monarchies. It removes the slingshot from the Davids in their battles with the Goliaths; it disarms the common man from dignity and honour and it replaces justice with inequitable handouts.

We believe that insurance companies are rich and powerful and do not need the protection of the present government. We believe that their saving some \$400 million per year at the expense of the citizens of this province is something that will not be forgotten. We also believe that the right to sue should not be taken away. We believe that there should be alternatives to this government to explore the serious question of insurance rates and that this proposal is only one of the many options that can be open to this present government to look into, explore and make the necessary recommendations.

We believe Bill 68 is a disastrous piece of legislation and one that, if it ever passes, the people of this province will not forget for a long time because it deprives them of their rights. To take away a person's rights is probably the first step to totalitarianism. We believe that Bill 68, in short, should be scrapped at the earliest possible opportunity and alternative measures to explore and alternative methods of decreasing insurance premiums in this province should be taken. Those basically are my submissions, members of the committee, and I am open to any questions you may have.

The Chair: Mr Kormos. No? Okay.

Mr Kormos: No, that was not a no; it was a gesture. How much time?

The Chair: Five minutes.

Mr Ferraro: Sometimes it is more and sometimes it is less.

Mr Kormos: Yes, you are still number one on the list, Mr Ferraro.

Thank you very much for coming, Mr Weingust, because once again you, like so many others, have shed some new perspective on this. You are a lawyer.

Mr Weingust: Yes, and if you want to know what my practice is, it is family law, criminal law and civil litigation.

Mr Kormos: Listen, if this bill goes through, the Liberal government is going to need criminal

lawyers as it has never needed them before. So stick around.

There has been a whole lot of lawyer-bashing and somebody has been trying to generate the impression that lawyers are just sucking big chunks of money out of the system. Mind you, if indeed anybody can tell me that they are, I say it is time to step on the lawyers, control the lawyers, regulate them. What is interesting is that relatively few lawyers have been before this committee speaking against the legislation as lawyers. Some have, but if they have been here, they have been here, like yourself, speaking on behalf of other groups in the community.

I should tell you that Mr Justice Osborne, along with Don McKay, the general manager of the Facility Association, says that one of the effects of this legislation is going to be that more and more of certain classes of people are going to be forced into the Facility Association, with ultraexpensive, \$2,000, \$3,000 or \$4,000 insurance, notwithstanding that they are not bad drivers.

The sorts of people who are going to be forced into that are people who, for instance, do not have employer-provided disability benefit programs. Among those people are seniors. Among the people identified by Don McKay in his third quarterly report of 1989 and by Mr Justice Coulter Osborne as being people who will be discriminated against and victimized by this legislation are senior citizens.

Mr Weingust: And children.

Mr Kormos: Among others. Given the fact that seniors can least afford to be forced into this ultraexpensive Facility Association and given the fact that your constituency, the people you represent, are seniors and their rights, surely you and your group feel this is grossly unfair.

Mr Weingust: Not only that, but I might say, speaking as a lawyer rather than on behalf of the Heritage of Children of Canada, I am somewhat disturbed by the advertising that has been going on at the present time by the government and the insurance companies. I am disturbed that the issue has been placed on what the lawyers will lose rather than on what the public will lose. I find that very, very disturbing.

I do not think that the public knows the facts. People have called me and asked me what this is all about and when I explain to them what it is, they are absolutely shocked. They are shocked to hear that this legislation could possibly be implemented by a government that has the best interests of the people at heart.

Mr Kormos: I hear what you are saying. I think you are talking about these ads here.

Mr Weingust: That is right.

Mr Kormos: In the case of the Globe and Mail and the Toronto Star, these are not quite full-page ads, and in the case of the Toronto Sun, they are full-page ads. We tried to figure out what they had cost by calling the advertising departments, and the figures range anywhere from \$30,000 to \$50,000, today alone; \$30,000 to \$50,000.

When you look at the advertising cost, the layout cost, for stuff that is the farthest thing from being accurate as could ever possibly be, surely drivers across Ontario have got to be mad as hell that their premium dollars are being spent on this sort of pap, when indeed their insurance companies are saying: "We're going broke. We have to increase your premiums and decrease your benefits."

Is this what you were talking about, this garbage here?

Mr Weingust: Not only that, but we feel that the government does not have to be the spokesman for the insurance companies and that the insurance companies can look after themselves. I would have expected that the insurance companies could make their pitch to this particular committee in any way they wanted and the government has the right to listen to everything they say and come to a conclusion at the end of it. But I have never seen, before a proposed piece of legislation goes through, where the government has taken a stand, you know, in bed with the insurance companies. I find that distasteful.

Mr Kormos: Except it is the public that is getting screwed.

Mr McClelland: Thank you for being here today. I am somewhat curious about a comment you raised at the end. It would be helpful for me—I am not aware of any government advertising—just on a point of clarification.

Mr Weingust: I am talking about the Minister of Financial Institutions (Mr Elston) actually saying exactly what the insurance companies have said in their advertising. I assume that there is some sort of complicity with regard to their views.

Mr McClelland: You assume complicity. That is another point altogether than saying that there has been any government advertising.

Mr Weingust: I am saying advertising—

Mr McClelland: I think in terms of fairness and accuracy—

Mr Weingust: You are quite right; I should not have used that word in terms of the spokesmen for the government having led the insurance bureau line.

Mr McClelland: That is an opinion you are clearly entitled to but, for the sake of accuracy—and I think you would want to be accurate—I think it is correct to indicate that, to the best of your knowledge, there has been no advertising.

I note your title of QC, a title that I undoubtedly will never have the privilege or opportunity of putting after my name—

Mr Weingust: It is shortened.

Mr McClelland: —if I were in practice longer than I have been or perhaps ever will. You will be very well aware, having done testimony and civil litigation—I presume much more than I have done—that many people who end up in the tort system do not receive benefits for a considerable period of time, apart from the limited no-fault benefit that would go to them under that system.

Mr Weingust: Yes, that is correct.

1450

Mr McClelland: You mentioned in your letter, dated 6 December, to the clerk that "as most of the elderly are either retired or unemployed, they would receive no compensation for loss of income benefits under the legislation as well." You are very much aware of the current no-fault benefit that would end up in the hands of elderly retirees and the like under the current no-fault system.

Mr Weingust: Are you referring to the \$185 that they might possibly receive? Yes.

Mr McClelland: The current benefit, as you know, is \$50 limited to 12 weeks.

Mr Weingust: Yes.

Mr McClelland: In the proposed legislation it would be in the order of \$185 tax-free for essentially a period of three years, and then the potential of extending that beyond.

Mr Weingust: Yes. I also mentioned that with regard to those particular benefits, people even have trouble getting their \$140 of no-fault benefits. It is a constant fight with the insurance companies.

Mr McClelland: I think there is an issue there that we could explore somewhat; I think there is some balance and response to that, if you like. But the reality is as well, sir, notwithstanding the fact that people fall currently under the no-fault benefits, they would receive a maximum of \$50 for 12 weeks and that would be it. Then, after an

average of four years, sometimes longer, they may or may not collect any further benefit.

Mr Weingust: They collect their \$140 and they get all their medical costs paid in the meanwhile; what they are waiting for is compensation for the pain and suffering. That is quite true.

Mr McClelland: But on the other hand, are you willing to at least allow that there is not only a possibility but indeed a stated principle of the current legislation that they would receive the \$185 immediately?

Mr Weingust: The present tort system that we have is still a fairer way of receiving benefits for that, even though they have to wait. There are very few people who, so to speak, cannot pay their mortgages in regard to a particular accident, because they can sometimes borrow on the expectation from the bank in terms of their accident. But I find that the system of balances by a court in terms of coming up with a just award of damages has been beneficial rather than detrimental.

First of all, 90 per cent of all motor accidents are settled between an adjuster and a lawyer. Of the 10 per cent that go into court, I think the awards that are given there, mostly by juries, by their peers, appear to reflect a fair and equitable way of dealing with benefits for motor accidents other than the no-fault benefits that they receive.

Mr J. B. Nixon: I want to go over this. Under the present system, seniors, retired people, unemployed people get zero no-fault benefits, right?

Mr Weingust: Yes.

Mr J. B. Nixon: Under the proposed system they will get \$185 a week, right? Why then do you say, "Worse, as most of the elderly are either retired or unemployed, they would receive no compensation." You just told me they would receive \$185.

Mr Weingust: But they only receive that until they return to their normal activity. What you are doing, in essence, is using those—

Mr J. B. Nixon: No, but—

Mr Weingust: But that is the legislation.

Mr J. B. Nixon: Either it is yes or no. Yes, they receive it—

Mr Weingust: They do receive some, yes, but we are concerned about it. We are concerned because we have trouble with the \$140.

Mr J. B. Nixon: I understand your concern, but you say here they receive nothing.

My next question is, what about the 30 per cent of people who launch civil suits who do not recover anything. Do you think that is fair?

Mr Weingust: Thirty per cent? I do not know where you get the 30 per cent. Certainly the negligent person does not receive any benefit from an accident, and I think that is the way it should be.

Mr J. B. Nixon: What if a grandfather is driving the kids and negligently goes through the red light?

Mr Weingust: I do not think he should recover, of course not.

Mr J. B. Nixon: No compensation, no rehabilitation benefits?

Mr Weingust: He gets his no-fault benefits; he gets all the insurance benefits as well.

Mr J. B. Nixon: No, he would not get any no-fault benefits, he would not get any loss of income benefits.

Mr Weingust: He would not get any loss of income, no. We do not like to reward negligent driving. I thought that was the purpose of safe driving.

Ms Oddie Munro: I just want some clarification. I think we all understand what the right to sue is, but I am wondering about the reality today. Could you just expound for me what the relationship is or what the figures or percentages are, as you know them, in terms of access to the right to sue, the availability and the incidence thereof?

I think what this bill is trying to do is to catch many of those people who feel that the right to representation, or at least due process, can be accorded without necessarily giving up their rights to sue. I know that various professionals feel that they do represent the rights of others and that the court of law is one way in which that can be done.

Mr Weingust: Perhaps I do not understand your question entirely, but I understand that only—

Ms Oddie Munro: In terms of the right to sue, do all people have access? Do they indeed sue?

Mr Weingust: Everybody has equal rights and access to the court system.

Ms Oddie Munro: Do they have the money to do it?

Mr Weingust: Yes.

Ms Oddie Munro: They do?

Mr Weingust: Yes, they all have equal—

Ms Oddie Munro: Why do they not do it then?

Mr Weingust: They do, as far as I know.

Ms Oddie Munro: No, they do not.

Mr Weingust: They have, either by way of representation or by way of legal aid, or the many lawyers who see a case as being a 100 per cent liability case will take them without any fee. That is with the present system.

Mr Solá: I see by your brief that you are opposed to the curtailment of the right to sue.

Mr Weingust: That is correct.

Mr Solá: This morning we had Guy Jones, who is the corporate counsel of the Toronto Transit Commission. He had a couple of statements that I found quite revealing. He has spent about a dozen years particularly on injured victims, and he said, "What happens on the road and what happens in court are two different things." The second statement he made is that "the jury is a group of six or 12 persons who are selected to choose who has the best lawyer," not who created the fault or who was at fault.

Do you agree with those statements—

Mr Weingust: No, I do not.

Mr Solá: —and if you do, how does that pertain to the issue of fairness that you have raised?

Mr Weingust: Of course there are good and better lawyers in any case, whether it is a contract case or a motor accident case or a matrimonial case. I think that is the criterion that you have in any type of litigation. But to say that what happens on the road and what happens in court are not exactly the same thing is, to me, a very bold statement, perhaps bordering on being naïve, because I find that the greatest tribunal for truth is the courtroom.

That is where the facts are put through the wringer and where only the important, relevant issues of the case, without the hoopla, are considered and where a judge or a judge and jury come to a very equitable and usually promising verdict. That is why 99 per cent of all appeals are dismissed, on the basis that usually there has been a fair and equitable trial in those particular matters.

Mr Kormos: Ian Scott would say the very same thing.

Mr Weingust: Yes.

The Chair: Thank you for your presentation.

Before I call the next group, we have had a request from the select committee on education. They have a requirement on Thursday afternoon,

25 January, for a presentation to be made in French. This room has that capability, and they are wondering if, on that afternoon, we would be willing to swap rooms with them. There would be a cost to that committee of \$3,000 if it is unable to obtain this room. I am putting that request before the committee. Think about it, and we can deal with it tomorrow morning if you like.

From Simcoe and Erie General Insurance, I have Mr Stradwick, Mr Heins and Ms Hilsden, if you would like to come forward. We have a copy of your written remarks. You have half an hour and I would suggest that you keep your presentation to about 15 minutes, if possible, which would allow 15 minutes for questions, comments and discussion. We are yours for the next half hour.

1500

SIMCOE AND ERIE GENERAL INSURANCE CO

Mr Heins: On my immediate left is Mr Stradwick, chairman of Simcoe and Erie General Insurance Co. On his left is Ms Jill Hilsden, our chief financial officer. I am president of the company.

Just as a brief introduction, Simcoe and Erie is a property and casualty insurance company. It is one of the few insurance companies that actually had its originating charter licence issued by the province of Ontario. We carry on business in all provinces of Canada and are owned by a publicly traded company which trades on the Toronto Stock Exchange, Simcoe Erie Investors Ltd. This company, in addition to owning Simcoe and Erie General Insurance Co, manages a number of other property and casualty companies and will do approximately \$230 million worth of premiums in the year 1990.

We are not one of the major private passenger automobile underwriters in Ontario. We probably underwrite only about half of one per cent of the available premiums in the automobile area.

We welcome the opportunity to appear before this committee. It is our view that a pure no-fault system of compensation for victims of motor vehicle accidents would be a better solution to the problem we are faced with in Ontario. However, we are prepared to support Bill 68 as a reasonable compromise of a problem which we see as incapable of solution by pleasing all of the interest groups involved.

Let's look at the problem for a minute from our vantage point, the way we see it. We see it as one of cost. We see the public complaining that automobile insurance is too costly. Whether we

think it is in fact too costly or not is irrelevant in our mind. The public believes it is too expensive and I suppose, ergo, it is.

Unless we as an industry are to be regulated so that we lose money on a continuing basis, premium levels must be directly related to the cost of claims. The cost of claims has been escalating at 15 per cent per annum since the early 1980s and, frankly, shows no sign of abating. The Ontario Automobile Insurance Board, in its reported dated 14 July 1989, found as follows, "Rate inadequacy in the system could well be in excess of 25 per cent industry-wide for the aggregate of all coverages from the period of 1 June to 31 December 1989."

It is our view that the problem is not the cost of the premiums but the cost of the claim settlements, compounded by the cost of delivering these settlements through what we see as an expensive and ponderously slow legal system. Frankly, we see the present accident compensation system for automobile insurance as one that we cannot afford and that the public does not wish to pay for.

It is a system that had its origins in a concept of compensation premised on fault, and the sheer volume of traffic today on our roadways makes any finding of fault questionable in many accidents. Is it fair to deny compensation to those victims of motor vehicle accidents who were adjudged to be at fault? We think it is not.

In addition, we feel the present system ignores the many changes that have taken place in Ontario society. Automobile insurance for third-party liability, as we know it, was added to the Ontario Insurance Act in 1914. Compensation based on liability does not properly acknowledge the many other benefits now available, such as the Ontario health insurance plan, disability and death insurance through employer-employee plans, workers' compensation and paid sick leave. Does it make sense for some claimants to recover twice their actual income because our current laws do not take into account other available forms of compensation to the victim? We think it does not.

Those victims of accidents who do not believe themselves to be at fault must submit themselves to a legal system in order to receive their compensation. The present no-fault benefits are absolutely minimal and of no great consequence by any real standard of compensation.

The legal system has already been described as ponderously slow and expensive. Court cases take as long as nine to 10 years to resolve, and the average is five to six years. In some instances,

lawyers' fees can amount to 25 per cent to 30 per cent of a victim's recovery, and that does not even take into account the costs of running the court system and the legal fees incurred by the defendant or his insurer. Does it make sense to run or administer a system of compensation this way? We think it does not.

The final and most significant point with respect to the present system is that the purchaser of automobile insurance must purchase insurance not for his own benefit but so as to compensate an individual with whom he might be involved in a motor vehicle accident. As a result, drivers are forced to carry high limits of insurance so as to protect themselves from awards to already wealthy members of the driving public. Does it make sense that a member of the public earning \$25,000 a year should carry enough insurance to compensate one who earns \$100,000 per year? We think it does not.

In 1988 the average premium for private passenger automobile business in Ontario was \$670.98. It is our view that this premium should increase by an average of 30 per cent to 35 per cent if premiums are to be restored to an adequate level. Given that the public feels the cost of automobile insurance is already too expensive, such an increase would clearly be unacceptable.

What is the solution? No doubt you have heard from a variety of interest groups up to this point in time, all proposing different approaches to the problem. However, if you cut to the heart of the problem and accept for the minute that insurance premiums must be sufficient to pay for the cost of claims that they relate to, the only way to either reduce premiums or hold them level would be to scale down the benefits that a claimant might receive as a result of an automobile accident.

Indeed, if you look at all of the proposals, save for that of the New Democratic Party, one sees an attempt, in one way or another, to reduce benefits. Even if one looks at the suggestions of the Canadian Bar Association for tort reform or at the proposal by Fair Access to Insurance Reform, commonly known as FAIR, it is clear that they are seeking to reduce benefits that automobile claimants presently receive as a result of a motor vehicle accidents.

The only solution that has been suggested to the affordability problem that does not potentially reduce these benefits is that of the New Democratic Party. The NDP has suggested that automobile insurance be nationalized and that the problem will be solved, that it will go away. In our mind, without either an increase in premiums or a reduction of benefits, this does no more than

transfer the cost from the private purse to the public one. We are philosophically against nationalization of the automobile insurance industry and, more importantly, we see no reason for the taxpayers of Ontario to subsidize through their taxes the cost of automobile insurance.

Before leaving this point, we would direct the committee to Mr Justice Osborne's report—I have referenced it in my letter—where he states at page 5, "There is no reliable evidence that consumers will benefit were Ontario to nationalize the automobile insurance industry and deliver automobile insurance through a public monopoly."

What are the solutions? The only viable solution is for the excessive costs of delivering compensation to be taken out of the system and for compensation to be paid without regard to fault. In addition, the victim's rights to compensation must be closely examined in terms of the overall social good as opposed to a purely selfish, individualistic approach.

In the longer term, the problem of affordability can be addressed by reducing the number of motor vehicle accidents. Given the enormous increase in drivers in Ontario, combined with the congestion on our roadways, this aspect will not be capable of easy resolution. As a company, we welcome the government of Ontario's initiatives in this area and would suggest some further measures, perhaps draconian to some, which should help to reduce the erratic and dangerous driving that is evident to anyone using the highways in and about the Metropolitan Toronto area.

We would suggest, for instance, that an Ontario Provincial Police hotline number be established. Members of the public travelling Ontario's highways who witness erratic or dangerous driving by others on the highway could then call this hotline number, reporting the licence plate number of the vehicle in question. If several individuals were to report the same licence number, it might well be sufficient evidence to successfully prosecute the driver of the vehicle in question.

How many of us while driving have seen erratic behaviour on the part of another driver and wished there was a police officer in the vicinity to apprehend the individual? Obviously, even with the increased number of police officers on our highways, they cannot be everywhere at once. Why not appeal to the members of the public to report erratic and dangerous driving and co-ordinate and cross-reference these reports by using the licence plate number, thereby apprehending the driver in question?

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We would also recommend that increased use be made of electronic surveillance to identify problem drivers. Certain European countries now monitor motor vehicle speed by identifying those cars which are speeding by photographing them when they have been electronically determined to have been speeding.

Both of these suggestions may raise issues under the Charter of Rights and Freedoms and in certain circumstances it may be difficult to prove who was the actual driver. We believe, however, that these problems are not insurmountable and that such measures would have the support of the public of Ontario.

No-fault automobile insurance: The fairest and most certain resolution to the affordability problem of insurance is pure no-fault. However, the Ontario government has proposed that all but the most seriously injured should be foreclosed from the tort system. The rest will have to rely on the other social programs, benefits and insurance provided by the workplace and individual insurance programs, together with the benefits provided by the new automobile policy, for their compensation if they have the misfortune to be involved in a motor vehicle accident.

We agree with the comments that Bill 68 should eliminate approximately 90 per cent to 95 per cent of automobile claimants from the tort system. Only those cases involving death, serious disfigurement or permanent serious impairment of an important bodily function, followed by continuing injury which is physical in nature, will have a cause of action for pain and suffering and loss of income, in addition to—importantly—the benefits provided by Bill 68.

In our view, it would have been reasonable or preferable to eliminate the threshold altogether and have all compensation by way of no-fault benefits. Despite the clarity of the threshold there will be considerable litigation surrounding its applicability to individual cases, which will cause uncertainty for certain claimants and still cost the system considerable moneys for the use of lawyers, medical experts and administration of the judicial system.

We will support Bill 68, albeit as a compromise. If one reflects on the compromise for a moment, one realizes that we are still left with a hybrid automobile policy in Ontario. However, instead of the majority of the compensation coming from the tort side of the policy, the majority of the compensation simply now comes from the no-fault side of the policy.

In addition, these changes address the problem we talked of earlier: compensation for all victims; timely delivery of compensation; proper acknowledgement of other social benefits, insurance schemes and workplace benefits; premiums geared to the needs of the driver and his family and not the lottery of who the victim might be; and, finally, the return of legal fees to the system for the benefit of victims.

I will conclude by saying that the elimination of awards for pain and suffering in all but the most serious cases, reduced recovery for those victims covered by other compensation schemes or other schemes of insurance, together with the elimination of the OHIP assessment and premium tax, is much criticized by other interest groups. Not to make these changes, however, will result in a significant increase in automobile insurance premiums.

On a purely theoretical basis, as an insurer we are entirely neutral when it comes to such issues, provided that we are entitled to charge the premium necessary to pay the claims. Given that our premiums have been frozen since April of 1987, except for increases totalling 16.5 per cent, while bodily injury claims are inflating at 15 per cent per annum—approximately 40 per cent during that period—and that the public of Ontario is not prepared to accept increases in automobile insurance, we see no choice but to adopt the route taken by the government of Ontario in Bill 68.

Mr Kormos: I have mentioned this before, but you guys come here like the guy who has just been convicted of murdering both his parents and then he begs for mercy from the judge because he is an orphan. You finally come and you say, "We know we have been treating the consumer shabbily." That is what Monte Kwinter and the Liberal government said about you insurers back in 1987. He said there was this unjustified shabby treatment of the consumer in the marketplace by the insurance industry.

You have also cried poverty. You cannot be wearing leather footwear because it would dry and crack with all the tears and salt water that have been dropping on it.

I cannot hold up all these; we have the *Globe and Mail*, the *Toronto Star* and the *Toronto Sun*, and these are all ads by the Insurance Bureau of Canada. We called the newspapers to see what it costs to put an ad like that in and then tried to figure out what it costs for the layout and the ad people and all that sort of stuff. It may be \$35,000 or \$50,000 in one morning alone of drivers' money, of premium dollars. Surely these

are the dollars the Insurance Bureau of Canada has got to be using. Ultimately it has got to be drivers' dollars. No bloody wonder that auto insurance premiums are going sky high when you guys are so careless with premium dollars.

I do not expect you to say anything less or more than what you did about the New Democratic Party, because quite frankly our response to your alligator tears has been, "If you aren't making any money, go away." The Liberals know that government can provide an auto insurance system because they have been doing it in Quebec for a good chunk of time now. The Conservatives know that government can provide good alternatives to the private auto insurance industry. They know that because they have been doing it in Saskatchewan and in Manitoba.

Even Social Credit, the most right-wing government—well, I do not know; Liberals in Ontario or Social Credit in British Columbia, it is a toss up—one of the most right-wing governments this country has ever seen, Social Credit knows it can provide a fair, affordable alternative to what the private auto insurance industry can offer. The New Democrats have known it ever since, heck, 1946 when the public insurance system was instituted in Saskatchewan. So you seem to have no allies. The Liberals know that the Liberal governments of the various provinces can provide a public auto insurance system, the Tories know it and we have known it for a long time. If you are losing so much money, go away. It is fine.

Indeed, you talk about the elimination of awards for pain and suffering and you try to make it appear as if it is just that little malingerer with the fraudulent whiplash who is not going to get any compensation for pain and suffering. But we know better. We know that it is the persons with broken backs, broken legs, broken arms who are going to receive no compensation. We know that it is the innocent victim of the drunk driver, the victim whose back is broken, who will not receive a penny for pain and suffering or loss of enjoyment of life because that injury does not meet the threshold.

This government is offering you more than what you guys even asked for back in 1986 and 1987 when you handed your so-called no-fault proposal to the IBC. So be it. What is going to happen? Catch this one. I predict that this government is going to Mike Wilson the threshold. It is going to GST it, it is going to tinker with the threshold and reduce it to something more akin to the Michigan threshold,

which is more in line with what you guys wanted back in 1987.

It may well index the no-fault provisions, and it may well even consider increasing the cap, but I am not sure about that because back two or three years ago you guys proposed a maximum on wage replacement under the so-called no-fault that was some couple of hundred dollars more than what is being offered now by the Liberals. What they have done is they have highballed to the public. As I say, they have GSTed it, they have Mike Wilsoned it. What they are going to do is tinker with it and create the illusion of being responsive.

Buy your wheelbarrow from Canadian Tire now, because when these guys have to start carting their profits to the bank all the wheelbarrows are going to be off the shelf. That is all I can say. Why should we believe you now when we have never been able to believe for the last 10 years?

The Chair: I do not know if you want to respond in any way, shape or form.

Mr Stradwick: I am not sure if that was a question.

The Chair: That is a safe assumption; it was not a question.

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Mr Heins: Maybe just one quick point: I had hoped that Mr Kormos might use his time to ask our financial officer, who was formerly the chief financial officer for Saskatchewan Government Insurance, what is in fact wrong with public automobile insurance, but since he has used his time up—

The Chair: Some of the other questioners—

Mr Kormos: Let us have that debate.

The Chair: Mr Runciman, and then Mr Nixon and Ms Oddie Munro.

Mr Runciman: I would like to take the gentleman up on that offer to talk; not about the Saskatchewan experience though. We went through that in the hearings on Bill 2, the Ontario Automobile Insurance Board Act, so I have heard more than I want to hear about that. I would like to ask you, though, about the financial situation of your company. What does your experience for the last fiscal year look like in terms of profit and loss on the auto side?

Mr Stradwick: We have not completed our statements yet for last year, but through nine months our combined loss ratio in automobile was running at about 160 per cent in Ontario. Taking away acquisition costs, and I am talking

about pure claims costs, it was about 130 per cent. These figures have been growing. I am talking in the liability area now. They have been growing for the last three years and I think you will find that anything we are stating here, certainly as far as 1988 is concerned, is fully supported by the department of insurance for Ontario.

Mr Runciman: What was your figure in 1988?

Mr Stradwick: Our pure loss ratio in automobile?

Mr Runciman: I want a dollar figure.

Mr Heins: That is a dollar figure. How many dollars did we lose in writing automobile insurance in Ontario?

Mr Runciman: Yes.

Mr Heins: As I said earlier, we are not big writers. We have lost approximately between \$3 million and \$4 million.

Mr Runciman: That has been your experience for the past two or three years, and it looks like this year's experience is comparable.

Mr Heins: That is right.

Mr Runciman: What have you done in response to those losses within the organization itself? What kind of efficiencies have you attempted to institute? Have you laid off people? Have you made any changes to react to those kinds of loss figures?

Mr Heins: We have really readjusted our focus on the marketplace. We do not actively seek out automobile insurance, obviously, when we are faced with those kinds of losses.

Mr Runciman: You say you do not actively seek out. You say in your opening here that you are doing, what, about \$230 million?

Mr Heins: In premiums, yes.

Mr Runciman: Okay. How much has that changed in the last three or four years? Have you seen a dramatic reduction in that figure in the past three or four years?

Mr Heins: Yes, we sharply reduced our total automobile business in Ontario starting in 1987.

Mr Runciman: Can you give us figures?

Mr Heins: In the order of, say, \$40 million down to \$27 million, gross numbers.

Mr Runciman: I am using this figure you have here.

Mr Heins: Oh, the \$230 million?

Mr Runciman: I am trying to relate it to what you have given us as testimony.

Mr Heins: The trouble is that you are relating different mixes of business. I think what I was trying to do was say that if we did \$40-million-odd worth of automobile insurance business in the province of Ontario in 1987, as of the end of 1988, we were doing only \$27 million. That number will have further dropped again when we see our final numbers for 1989.

Mr Runciman: In effect, you have simply discouraged that business?

Mr Heins: Correct.

Mr Runciman: You have not taken any other measures in terms of reductions in salaries or freezing of salaries, bonuses and perks to officials within your industry, within your organization, nothing like that?

Mr Heins: No. From that standpoint, while we are growing in premium in other areas, certainly our ability to pay bonuses is being adversely impacted by our automobile results. It is having an effect on us.

Mr Stradwick: As far as reducing salaries in the automobile division is concerned, unfortunately that would lead to selection against good personnel, which we still think should be a target for any company, to have the best possible people, looking after the claims area particularly.

Mr Runciman: We had a couple of witnesses, a father and a son, before us today. The father had been in the brokerage business and just one of the things he mentioned was the question of deductibles. He talked about the impact of deductibles on the cost of a policy and trying to purchase a policy with a \$3,000 deductible. He pointed out that in 1960 an auto cost \$2,500 and the insurance industry was pushing a \$100 deductible. Now we have autos around \$25,000 perhaps and still the industry is pushing \$100 deductibles. What would the impact be if indeed those kinds of deductibles were available to consumers?

Mr Heins: It would have a sharp impact, obviously, on the collision aspect of premiums. Unfortunately, apropos the actual problem we are looking at, the collision side of the coverage is not the problem; it is the third-party liability side, where deductibles are not at this point permitted.

Mr Runciman: There are a lot of problems on the third-party liability side which could be laid at the doorstep of the insurance industry as well. I suggest that to you.

I think you also suggested you were an endorser of the smart no-fault plan.

Mr Heins: Pure no-fault.

Mr Runciman: The smart no-fault that was recommended by the Insurance Bureau of Canada following Slater. Maybe I am wrong. Did you not support that?

Mr Heins: No, (a) we are not members of IBC and (b) we did not support that particular—

Mr Runciman: So you have not supported threshold no-fault in the past.

Mr Heins: We have always supported a pure no-fault system.

Mr Runciman: But you are comfortable with this as a compromise; that is the position you are taking.

Mr Heins: Correct.

Mr J. B. Nixon: Picking up on a line of questioning that Mr Runciman was pursuing talking about the deductibles on the bodily injury side, why do you see raising the deductible as not a particularly valuable solution?

Mr Heins: As I see the problem, if you look at the problem today, we have a problem on the bodily injury side of the insurance policy.

Mr J. B. Nixon: And that is specifically—

Mr Heins: That area does not have a deductible applicable to it. The deductible is applicable to your collision coverage, and while larger deductibles on collision coverages would assist in reducing that premium, that is not where the problem is. In fact, the industry does sell very large deductibles on high-value cars on the collision side, but the problem lies on the personal injury, the third-party liability exposure.

Mr J. B. Nixon: What is the highest deductible that you sell?

Mr Heins: I think we get up as high as \$2,000 or \$3,000 on high-value cars. We do insure high-value cars. I mean, you are starting to get into the esoteric. If somebody is driving a Porsche, he will likely have a \$3,000- or a \$5,000-type deductible on that vehicle, but there are not many Porsches on the roads.

Mr J. B. Nixon: As you are not a member of the IBC, obviously you are not contributing to its advertising campaign.

Mr Heins: Correct.

Mr J. B. Nixon: You are also domiciled in Ontario.

Mr Heins: Right.

Mr J. B. Nixon: So when Mr Kormos shouts at you to go away, I wondered where you would go.

Mr Heins: I know where my first stop would be on the way I would swear I was going. But in any event, there is nowhere for us to go, obviously. This is our home, this is where our company has its origins. We are one of the few companies that are in a position like we are, and we are unlike so many of the foreign companies that carry on business in this country. Our industry is dominated by foreign carriers in this country, but we are not. We are Canadian-owned and Canadian-domiciled. We have nowhere else to go.

Ms Oddie Munro: The Ontario Insurance Commission will have expanded, new regulatory powers, and I am wondering how you have reacted to them. Some of them you may already have been doing. I am looking at the need for the commission to obtain increased information and prosecution, licensing, and particularly in respect to the need for expanded examinations to certain players in the system, including agents and adjusters. I am just wondering if perhaps the agents and adjusters have already moved a good way in that direction, I do not know. I am wondering just in general how you view the new powers, in addition to the regulatory powers that the board used to have.

Mr Heins: If one goes back to 1987, and I am not casting fault in any direction here, I think that there obviously was a great deal of misunderstanding or lack of understanding about what the insurance business was all about. I think the measures that are proposed under this legislation will go a long way to solving those problems.

It is interesting. Looking at the hearings that took place, I think by the end of the hearings the level of knowledge had increased dramatically, both on the part of the public and within government, in fact, and by the regulators as to what our industry was really all about. So I think these measures will serve all of us well because they will continue that education process, if you like, and create hard facts for people to look at.

The Chair: I have Mr Runciman for one minute.

Mr Runciman: Just as a follow-up to a comment you made in respect to reducing your auto business over the past number of years because of losses, when you reduced that business, how were you doing this, through attrition, or were you looking at higher risk, evaluating risk? How do you get rid of this business? What is the process?

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Mr Heins: The only way that is really open to us would be to cancel brokerage contracts.

Mr Runciman: Do you have a sister company in the auto insurance business?

Mr Heins: Not a sister company. We manage some foreign carriers, two carriers at the moment, New Rotterdam Insurance Co and GAN Canada Insurance Co.

Mr Runciman: Would any of this business in some way, shape or form find its way into the business file of those companies?

Mr Heins: GAN Canada, which filed automobile insurance rates for the first time this summer, is writing some business.

Mr Runciman: Some business that you formerly held.

Mr Heins: I doubt it. Most of its business is new. If we cancel a broker, we simply cancel that broker. An individual who was cancelled in that brokerage may or may not find his way back into one of our other companies.

Mr Runciman: I guess I would certainly like to see more information on that with a number of insurance companies, Mr Chairman, because some of the concerns I have heard in my office in respect to sister companies, affiliated companies, is that they are getting rid of their book of business but putting it into other affiliated companies at a much higher cost to the consumer.

The Chair: Thank you for your presentation. We appreciate it.

From the International Brotherhood of Electrical Workers, I have two gentlemen, Mr Dillon and Mr Tersigni. There are two pieces of information. There is exhibit 12, which is in your package, and there is also a package which the clerk has distributed, consisting of five pages. I would suggest to the gentlemen as they come forward that if we could take 15 minutes for the presentation and allow 15 minutes for discussion, questions and comments, we would appreciate that. We are yours for the next half-hour.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Mr Dillon: First off, to my left is Ralph Tersigni. He is the executive secretary-treasurer of the IBEW Construction Council of Ontario, which is the bargaining council for the electrical workers in this province. I am Pat Dillon, business manager of IBEW, Local 105, in Hamilton, Ontario, and president of the bargaining council for the province.

Before I get into reading this statement, I would like to say a couple of things. First off, I would like to say that we are happy to have the opportunity to be here to present our views and we thank the legislative people for that.

One of the things that I would also like to say before we get into reading this is that based on what I read in the newspaper approximately a week ago, I believe the comments that were made to this committee by the Honourable Murray Elston insulted groups throughout this province that are here to criticize the legislation. It seemed that he feels the only group that is against the legislation is the lawyers and that is for self-interest. I take exception to his comments in that regard.

Before reading the statement and getting into answering questions, I will start out right now with making sure you know that I am not an expert in the insurance industry. In fact, there is someone I maybe would have liked to have brought with me who would be an expert. The people on the government side of the House may have interpreted that as bringing a lawyer with you who is self-interested. I did not want to give the wrong impression, so we will fly the way we are.

The International Brotherhood of Electrical Workers, Local 105, is concerned with the proposed Ontario motorist protection plan and, in particular, the proposed Insurance Act amendment.

Compensation for pain and suffering: The elimination of compensation for pain and suffering and loss of enjoyment of life for 90 to 95 per cent of innocent motor vehicle accident victims is totally unacceptable. Compensation for pain and suffering is just as real as compensation for wage loss. While we recognize that monetary compensation does not repair injured bones, muscles and ligaments, an allowance of money which, in each particular circumstance, will provide an innocent accident victim with a reasonable measure of consolation is to be steadfastly protected.

I have personally seen the pain, suffering and effect injuries suffered in a motor vehicle accident have on the families and lives of members of our union. This pain and suffering cannot go uncompensated.

Income replacement compensation: The workers in our union need to be physically fit and healthy to do their work. As part of their employment, they are often on the road. Injuries from automobile accidents can easily put them off work.

Under the present no-fault tort system, our members have been able to count on full income replacement if absent from work due to injuries suffered in a motor vehicle accident. Our workers and their families need that protection. We are concerned because, under the proposed plan, they will not have that protection.

Presently, our union has purchased a weekly indemnity (sick leave) benefit package for all members paid through payroll deduction. This pays our members \$250 per week while off work on non-work-related injuries such as those suffered in a car accident. Our union members presently earn \$28.34 per hour. If we take the average worker as an example and assume that as a result of injuries suffered in a motor vehicle accident he is unable to work for 52 weeks, the following occurs under the present no-fault tort system. The injured worker would receive full income replacement compensation consisting of the following: \$140 per week no-fault benefits and \$250 per week indemnity benefits, for \$390 per week.

This \$390 per week carries the injured worker through until the resolution of his claim against the at-fault driver, at which time he would receive full replacement of income lost, less no-fault benefits paid. The calculation works out as follows: 52 weeks times \$28.34 times 40 hours, equalling \$59,030.40, less no-fault benefits paid of \$7,280, for a total of \$51,750.40.

Under the proposed legislation, the injured worker would receive the following on a weekly basis: \$250 per week indemnity benefits and \$450 per week, being 80 per cent of earnings up to a maximum \$450 per week, for \$700 per week.

The injured person, for some inexplicable reason, must wait seven days before the \$450 no-fault benefits are paid. As a result, he receives the following: \$250 per week times 52 weeks, equalling \$13,000; \$450 per week times 51 weeks, equalling \$22,950, for a total of \$35,950.

Thus, at the end of 52 weeks, the injured worker has incurred a monetary loss of \$23,080.40. He is an innocent victim and yet he must bear this loss under the proposed legislation.

To further exacerbate the problem, the \$450 weekly benefits proposed in the legislation are not indexed to inflation. We all know the present no-fault benefits have not been increased by the provincial government since 1978. The members of our union expect a \$5-per-hour raise in our new contract. Thus the problem will be further exacerbated and members of our union will

experience a \$33,480.40 shortfall in income replacement compensation under the proposed plan in 1991.

How the government can say to the average people of Ontario, including unionized workers, that this is a good plan, when innocent workers who are victims of motor vehicle accidents will not receive full income replacement, is beyond comprehension.

OHIP indemnification: In our view, the auto insurers of at-fault drivers should not be forgiven their obligation to indemnify OHIP for costs arising from automobile accidents.

The medicare system in this province is already financially strapped. The waiver of this obligation will only force the government to increase OHIP premiums charged to employers, self-employed individuals and others not insured through their employment. No doubt employers will argue at the negotiating table that this new obligation must be passed on to the worker in some fashion. An increase in premiums by the waiver given to the insurance companies would only exacerbate the situation and is not acceptable to our membership.

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Persons under the age of 16 years: The outright discrimination against persons under the age of 16 years is reprehensible. An innocent child who is injured in a motor vehicle accident, not catastrophically, will receive no compensation at all other than rehabilitation and medical expense reimbursement. This is entirely unacceptable. An innocent child should receive fair compensation for pain, suffering and loss of enjoyment of life.

Furthermore, it is quite feasible that an injured child who is absent from school for a prolonged period may lose his or her year at school. This child will be forced to repeat the year at school. This will result in the child eventually entering the workforce a year later than he or she otherwise would. Surely the child should be properly compensated for this economic loss. I am advised by lawyers who represent injured children that this compensation is available in our present no-fault tort system. Our membership is steadfastly against any retraction of this compensation for our youth.

In conclusion, the International Brotherhood of Electrical Workers, Local 105, is interested in an insurance plan that is fair to the average Ontarian.

The government of Ontario is telling the public that the proposed legislation will mean that insurance premiums on average will only rise

eight per cent next year as opposed to 30 per cent. However, what the Liberal government is not telling the public is that for the eight per cent increase in premiums, it will get less than one half the coverage. Most innocent accident victims will not receive full income replacement compensation nor compensation for pain, suffering and loss of enjoyment of life.

This is unacceptable. The plan proposed by the Liberal government is more than fair to insurance companies but devastating to innocent accident victims.

We have been told that the Liberal Party of Ontario and the Liberal government represent the average Ontarian. With this legislation, that image is shattered. The Liberal government could not have proposed legislation that would have made the insurance industry happier.

We concede that weekly no-fault benefits increased to \$450 per week are a good thing. I am told that the increase in medical and rehabilitation benefits is of little value as very few accident victims ever use the present \$25,000 allotted. However, the elimination of compensation for pain and suffering, the elimination of full income replacement compensation, the elimination of compensation for our youth and the waiver of OHIP indemnification by the insurers of at-fault drivers are unacceptable. We urge the Liberal government to put a halt to this legislation now; all of which is respectfully submitted.

Mr Kormos: Thanks for coming, once again, you, like so many other groups in the last couple of days of this week and all of last week.

You undoubtedly are going to be offered the either-or alternative. There is an effort on the part of the proponents of this legislation to paint its critics with a black brush, that is to say, "How dare you not want people to have no-fault wage replacement of \$450 a week when they are at fault," or: "How dare you not want people to have that modest \$50-a-day, long-term care. Big deal."

But the fact is, at least some sort of Dickensian institution might take you at 50 bucks a day. It is not an either-or situation. All of us believe that anybody who is injured, regardless of fault, should be entitled to some basic minimum standards when it comes to rehabilitation, when it comes to medical care and indeed when it comes to wage replacement.

We have had no-fault benefits in this province for over a decade now. The government has sat on its hands and has not bothered adjusting the benefits to reflect the realities of 1989 or 1990, and that is why they are still at \$140. The

government cannot brag about putting them up to \$450, because that is what they should have been in any legitimate sense anyway.

These guys should not be so stingy with their perks and their parliamentary assistant pay and so on. They should spread it out and it would not be kept in the hands of just a few; it would be spread around. The sad reality is that they are painting the critics with a black brush when in fact people like the Attorney General have been critical of this scheme and have said so. He is quoted in a newspaper, dated 1 December 1989, the Ontario Lawyers Weekly.

Good people like yourselves come here, and you really have to wonder why all this is necessary when the most basic things have not been done, when you are simply drilling another hole in the bottom of the boat, when in fact the government's own Ontario Road Safety annual report indicates that driver improvement in Ontario has largely dealt with post-licensing control. What that means is that they do give a tinker's damn about who gets on to the road.

Once there are accidents, once there are convictions, once there are tragedies and fatalities, the government says: "We will do things, we will give demerit points. We will suspend licences for periods of time." But it has been almost 40 years since there has been any fundamental change in the requirements that one has to meet before one can operate a motor vehicle on a highway.

This government has been harangued about that by people like John Bates from People to Reduce Impaired Driving Everywhere for a long time now. They have all sorts of fluffy, glossy ad campaigns about buckling up and daytime headlight use, but they will not do the most basic, fundamental, meaningful thing about making sure that safer drivers are on the road to begin with. Let's face it, punishing a negligent driver after the fact is a little bit like closing the barn door after the horse has bolted. The crisis, the tragedy, the fatality and the injuries have already occurred.

We have to make sure that the standard for people who are allowed on to the road is one that reflects the seriousness and the responsibilities associated with driving. That is what is going to cut the cost to insurers, that is what is going to protect lives, that is what is going to protect people from bodily harm. Here the government is punishing the victim and quite frankly blaming the victim. The Liberals along with the insurance industry are creating two victims.

Peterson made his big bold statement about a very specific plan to reduce auto insurance premiums. He lied, as we all know, but we have become desensitized to the fact. We hear these prevarications so frequently from these people that we say, "Oops, another one." It becomes meaningless to us. Now he has got the Minister of Financial Institutions scrambling, his hand being guided by the insurance industry, creating double victims.

People are victimized first by the drunk driver, by the negligent driver—their bones are crushed, their backs are broken, their legs are broken—and then they are victimized a second time by the insurance industry. They simply want bigger and bigger profits, profits like they have never seen before in their lives.

When people like you, people who represent the working people of Ontario, come forward and point out shortcomings, when people like you, who are the people who build our buildings and make our cities and our communities run, come forward and say, "No, this is wrong," you are criticized. You have people blackening your name and suggesting all sorts of—neither of you are lawyers, are you?

Mr Dillon: No.

Mr Kormos: God bless you.

Mr Solá: I am interested in the first paragraph in your brief on compensation for pain and suffering. You place an emphasis on providing measures of consolation to innocent accident victims. I just want to read a sentence that Professor Brown of the University of Western Ontario read to us this morning. It says, "The new plan reflects a change in emphasis from giving solace to making people better and providing practical assistance through rehabilitation."

Now if you had your druthers and you were involved in an accident, would you prefer solace or would you prefer a plan that got you back on your feet and regained your health?

Mr Dillon: That is a difficult question to answer. Obviously, I would prefer not to have been in the accident to start with.

Mr Solá: That is avoiding the question.

Mr Dillon: I know that. I will get more directly to the answer.

Mr Kormos: You have him backed into a corner now, do you not?

Mr Dillon: I do not see how this system, any different than the system we have had in the past, is going to help somebody get better. I think what we are talking about here, that people be

reimbursed for the pain and suffering that they have gone through, is not what the doctors are going to do or not going to do to make someone get better.

1550

Mr Sola: This plan provides for money immediately, after the accident within 10 days, for any injuries you have and it provides all sorts of other compensation. I would like to—

Mr Dillon: Could I just say something before you leave that point? When people in our society right now are involved in car accidents, the first thing that happens is that they are looked after healthwise. Then the courts and whoever decide who pays for that health coverage. So I do not see where your point is that this system is all of a sudden going to start making people's arms get better quicker, or their back injuries, their neck injuries or whatever.

Mr Sola: That is a debate, but I would like to get to another point that the delegation before you mentioned. They said, does it make sense that a member of the public earning \$25,000 per year should have to carry enough insurance to compensate one who earns \$100,000 per year? When I look at figures that you presented as to what your union members are earning, they might prefer that.

But with a sense of fairness, should the person on minimum wage have to carry enough insurance in order to compensate the bank manager whom he happens to run into because of the adversarial system we have in place right now, or is it fair for him to carry a system or a method of insurance that will compensate him fairly in case he gets into an accident?

Mr Dillon: I guess we are here discussing no-fault insurance. I do not see that the bank manager, if we are using him for an example, should suffer because of the wage rate that the drunken driver or the dangerous driver may have who hit him, who caused the accident. I do not see the relevance there at all.

Mr Tersigni: Just as a passing comment on Mr Sola's comments, we do not know much about auto insurance but we know a lot about insurance when it comes to health and welfare; when it comes to weekly indemnity; when it comes to dental plans; when it comes to an injured worker; first-day accident, second-week sickness. Those are plans that our members have paid for over the years with money out of their own pockets.

I think the issue here, as Pat pointed out, is that in some respects we commend the government

for getting into no-fault auto insurance but I think the point has been well made that you are half-baked. We believe in any kind of fair premium paid for any kind of plan that should be equally—the compensation should be there, such as the right to sue.

Mr Sola: That is not compensation, that is a right.

Mr Tersigni: Exactly, that is a right. But if the Ontario government is going to get into the auto insurance plan, then get into it 100 per cent the way we do. When insurance companies rip us off we say goodbye. We will self-insure ourselves.

Mr Kormos: Right on.

Mr Tersigni: There is a very important point here. If you are looking at reducing costs, in self-insurance 100 per cent of the unused premium is retained by the plan or by the government. Liars can figure but figures do not lie. One thing that always impressed me about the comments I have been hearing lately on the insurance companies losing all this money, in my job I travel in big cities and I have probably been to every small, rubber-boot community in the province of Ontario and I have not been in one yet where I have been downtown to have lunch or drive through a square that two buildings on the corners of the square are owned by—who? Rick, you know what it is like in Guelph. They used to own the whole square.

Mr Ferraro: Now the Italians do, Ralph.

Mr Tersigni: We built it, we should own it.

The point here that we see, it is commendable for any government to get into the sort of thing that equalizes things like OHIP or socialized medicine, and this is another example where you just did not go far enough. I think you have been conned by the insurance companies, pure and simple.

Ms Oddie Munro: I certainly understand your point that you agree with the fact that we have moved considerably on the \$450 per week. The current scheme, as you know, without suing, only allows \$140. I guess what we were trying to do—at least the side that we were focusing on was the rehab side, and I would think that many of your members would not have access up to \$25,000 because of the red tape involved in getting the money quickly to the claimant.

I would think—and I do not know, but certainly your comments are things that will provoke us into thinking about it more—that because of the speed with which the benefits and compensation are given to your members, you will in fact see the utilization of rehab among the electricians,

plumbers, whoever. You might want to comment on the rehab side and why it is your members have not used up the \$25,000.

The other thing I would like to ask is, when your members have been able to count on full income replacement, is that assuming that they won the case in the court through the right to sue?

Mr Tersigni: Excuse me. Could you repeat that question?

Ms Oddie Munro: On page 2—I do not understand—it says, “Under the present no-fault/tort system, our members have been able to count on full income replacement.” Is that because through the right to sue you have been successful in court?

Mr Dillon: The only time that we would really hear from our members on stuff like that is when they have been in an accident, been in court and been called in as witnesses. I have never been in one yet that they have lost. If someone else is at fault, they have always won. The \$25,000 itself I do not fully understand, because it has always been figured in with the guy's settlement, the member's settlement. I do not really, and I stated that earlier, understand that whole process. But what the lawyer had advised us is that very few use up that \$25,000 as it is.

Ms Oddie Munro: I think the rehab side has been strengthened to such an extent that, without any justification other than presentation of a claim from the insured, you will be able to get benefits and full treatment by a medical or advisory team, including rehab personnel. I think many people had felt that the delay—that people simply did not access it. They would simply say: “We don't need it. We won't settle.”

Mr Dillon: That could be, but one thing for certain is that everybody has always had access to medical help immediately and then it was figured out later who did the paying. You mentioned that the government has improved it to \$450 a week. I think that when you look at \$140 a week in 1978 to \$450 a week in 1990, that is not a really big improvement, and the fact of the matter is that if the \$450 a week stays constant and we move on for the next 12 years without an increase, it is a major problem.

Ms Oddie Munro: Several other groups have mentioned the indexing, so it has been very helpful.

The Chair: Okay, thank you very much for your presentation. We appreciate it.

From the Canadian Federation of Independent Business, we have Ms Ganong and Ms Andrew.

We have a half-hour for your presentation. The clerk has distributed copies of it. Perhaps we could suggest a guideline of 15 minutes for the presentation and allow 15 minutes for questions, comments and discussion. We would appreciate that. We are in your hands for the next half-hour.

1600

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

Ms Ganong: My name is Linda Ganong. I am the director of provincial affairs for Ontario for the Canadian Federation of Independent Business. My colleague is Judith Andrew, who is the director of provincial policy.

Ms Andrew: If it pleases the committee, our submission is relatively short and we would like to read it into the record.

The Canadian Federation of Independent Business is a nonpartisan political action organization representing independently owned Canadian-operated enterprises across Canada. On behalf of our 39,000 members who do business in the province of Ontario we are pleased to present this brief on Bill 68, An Act to amend certain Acts respecting Insurance, which creates a threshold no-fault auto insurance system to replace the current mainly tort system of auto injury compensation.

CFIB members are keenly interested in this issue, not only as citizens but as business people who will be directly affected. Small business people are also concerned about the impact of public policy decisions affecting their employees such as those inherent in Bill 68.

Policymakers should recognize that small business is the predominant form of enterprise in the province. Of the some 300,000 firms with paid full-year equivalent employees operating in the private sector in Ontario in 1987, about 292,000 or 96 per cent of them had fewer than 50 employees. About three quarters of Ontario firms employ fewer than five employees.

These Statistics Canada business microdata have recently been amplified to account for the self-employed. In 1986 about 260,000 self-employed Ontarians worked on their own account without paid employees. Thus the total number of business enterprises in Ontario, including those of the self-employed, amounts to some 560,000 operations, of which 98 per cent have fewer than 50 employees and 96 per cent have fewer than 20. Businesses with fewer than 50 paid employees account for approximately one third of the Ontario workforce. Those with fewer than 20 account for about one fifth.

CFIB's position on no-fault auto insurance is determined by majority votes on public policy issues contained in our publication *Mandate*. In 1986 the following question was posed to the membership, "Are you for or against a no-fault system for auto injury compensation?" The result as you can see is: for, 63 per cent; against, 23 per cent; undecided, 14 per cent.

Do understand that our members did not vote in favour of the exact configuration of the threshold no-fault scheme proposed in Bill 68. In the context of Bill 68, the results of the *Mandate* question support the goals of faster and more fair payments to all accident victims, affording greater certainty in the system.

Our members are also attracted by the prospect of less legal wrangling and consequent lower legal costs to settle these matters. As citizens and as employers, they want the cost of auto insurance premiums to be affordable for themselves, their families and for employees who drive and who may only have one option for getting to work. Our members would also join with the many observers who support the elimination of the faked or greatly exaggerated cases; for example, whiplash cases which have provided cash settlements for some people at great expense to the auto insurance industry.

In short, our members support modifications to auto insurance plans to provide adequate insurance coverage at fair and affordable cost to insureds and at the same time to retain accountability for one's actions behind the wheel.

Responding to the critics: We are aware of strongly held views that the Ontario motorist protection plan will not deliver on these objectives. This heightens the importance of the work of your committee in scrutinizing the legislation most carefully. Bill 68 is such an important matter—literally life and limb hang in the balance—that as legislators you must be absolutely satisfied that you have thoroughly examined each of the criticisms. This would include making the necessary inquiries of Ministry of Financial Institutions staff and others to be satisfied that Bill 68 is indeed going to make good on its promises.

The following are several concerns that in our view demand careful consideration.

Cost reductions: What is the real story? Mr Justice Coulter Osborne in his commission of inquiry observed: "Social conditions and insurance circumstances prevailing in Ontario are far different from those which dominated the Michigan motor vehicle accident compensation debate in the 1970s." He concluded that "aside from the

provision of a modest degree of additional stability for automobile insurers, cost/premium decreases would be modest were we to proceed to threshold no-fault and those modest cost savings would be imported on the backs of over 90 per cent of injured Ontario motorists who now have the right to seek noneconomic compensation."

University of Toronto Professor Jack Carr, in his 3 November 1989 address to the Advocates' Society Toronto meeting, noted that 16 states adopted threshold no-fault systems between 1971 and 1976, but that subsequently two states, Pennsylvania and Nevada, reverted to an add-on system like Ontario's current one. He referred to study findings which apparently show there is very little difference between fault and no-fault states in litigation expenses and that payments to victims are about equally efficient.

The turning point for Pennsylvania, according to Carr, was a study covering 1975 to 1982 highlighting that state's 206 per cent premium increase over the period as compared to 54 per cent for the average of tort states. Carr's data for Nevada also showed a 124 per cent premium increase over 1976 to 1983 as compared to 50 per cent for the traditional tort states. Both states sold the no-fault scheme in part on the promise of lower costs and insurance premiums, and when the experience was the opposite they were disenchanted to the point of abandoning the no-fault approach.

Given that no-fault auto insurance is supposed to contain costs in premiums, this apparently contrary experience in the United States should be investigated carefully and the concern rebutted. Have committee members received an adequate explanation why Bill 68 is expected to reduce costs and save on insurance premiums, contrary to Osborne's prediction? What is the Michigan experience and that of the other American states going this route and is it applicable to Ontario?

More risky drivers behind the wheel? Professor Carr also argued that the idea of retaining fault for rating purposes is not likely to work. He points out that it is expensive to find fault and that an insurer has to pay his insured whether the person is at fault or not, so the insurer will not have any incentive to use resources to determine fault. Moreover, he reasons that insurance companies will be more likely to insure high-risk drivers at a lower than proper rate because any damage they inflict will be paid by the victims' insurance companies.

These are serious points and should be considered carefully by the committee as to their

validity. I understand Professor Carr is to appear before the committee today, so I guess you will have a chance to ask him directly about some of these points.

The Canadian Federation of Independent Business has specific concerns about Bill 68. In addition to sharing concerns on the serious points raised by others as to whether the legislation will fulfil its promises of faster, more fair compensation with adequate cost containment and the appropriate incentives for safe driving, CFIB has particular qualms about the potential treatment of small business owner-managers and the self-employed, who number about 560,000 in this province.

The table of benefits in *Your Guide to the Ontario Motorist Protection Plan*, published by the Ministry of Financial Institutions, seems to assume that the so-called employed work for an employer at a fixed annual salary. There is no question that small business entrepreneurs are fully employed, often devoting long hours in sweat equity to their businesses. However, especially in the early years of the business and during periods of reinvestment, it is often just not possible to draw any salary.

Statistics Canada's corporation taxation statistics show that over half the firms in any given year do not earn sufficient income for these businesses to be taxable. This is no reflection on the health of the businesses. Many are thriving and growing, bringing in substantial revenues. However, these revenues are being plowed back into the business to finance its growth, with the owner choosing to forego a salary and net personal gain for the sake of the business.

CFIB's November 1989 research report, *Business Growth in Canada: Business Formations in Fiscal 1989-89*, shows that over 55,000 new incorporations are processed in Ontario annually, while some 116,000 new proprietorships or partnerships are registered. Many of these new entrepreneurs would be hard pressed to prove a particular net business income to establish benefits under the no-fault scheme.

Unable to prove net business income, the entrepreneur could be left with the minimum of \$185 per week. This would be a heart-rending tragedy if his or her bodily injury was serious but not permanent. Unable to work and unable to sue, the entrepreneur could lose the business and possibly his or her home which the bank holds as collateral. If the accident was caused by the other driver, the owner-manager would truly be a victim of the no-fault scheme.

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Some owner-manager, self-employed and employee victims of auto accidents may be earning in excess of the \$450 ceiling and they would suffer pecuniary losses as well as uncompensated pain and suffering. This class of victim will become more numerous as wage inflation diminishes the value of the no-fault benefits. There are ways to ameliorate these situations and we suggest all of the following:

1. Follow the Michigan example where pecuniary loss gives a right of tort action, but strictly limit the recovery to financial loss only, not noneconomic loss.

Justice Osborne found that there has been a steady increase in bodily injury loss costs since 1982 and that nonpecuniary general damages represent the single most significant component of damages. Figures in the Osborne report show nonpecuniary damages accounting for over 70 per cent of settlements in small—under \$10,000—judgements, 47 per cent in medium—that is, \$10,000 to \$75,000 settlements, and 27 per cent in large—over \$75,000 amount—bodily injury claims. By contrast, loss of employment income in the three categories accounted for only 10 per cent, 17 per cent and 12 per cent of settlements respectively.

It is reasonable to expect that no-fault benefits would adequately cover economic losses for most people, but where the benefits are inadequate a right of action should remain for the employed and for small business people who can prove net business income; that is, financial loss in excess of the allowable benefits.

2. Adopt the Quebec approach to reimburse a victim working at the time of the accident without pay in a family enterprise who is unable to perform his regular duties by reason of the accident.

Bill 92 amendments to the Quebec Automobile Insurance Act, passed June 1989, provide for a victim working without pay in a family enterprise to be reimbursed for his or her expenses for replacement manpower for 180 days post-accident. The term "family enterprise" is not defined in the act, but we are advised that as long as the victim is unpaid and there is another family member working in the business, the victim qualifies for the reimbursement of up to \$500 weekly on the presentation of receipts.

We have also been told that at the 180-day point, income is presumed and it is determined according to a chart that takes account of factors such as education and experience. Certain of the details are sketchy since these provisions are so

new, but the direction of the legislation is clear in its effort to recognize the special circumstances of family businesses, particularly new family businesses.

It is our understanding that the details of Ontario's no-fault benefit schedule are to be fleshed out in regulations to the act. The gap in the schema for entrepreneurs, working for the most part in family businesses, is so wide and so worrisome that we would urge the committee to confer with the Minister of Financial Institutions and his officials as to the resolution of this problem. The Quebec approach appears quite sensible and we would hope that the committee would recommend strongly that Ontario emulate Quebec in this area.

3. Use the Quebec approach for defining income earned from employment for the purpose of establishing the benefit level for self-employed auto injury victims.

Rules appearing in the Quebec Gazette on 20 December 1989 clarify that the self-employed individual may take the highest of business income over the 12 months preceding the date of the accident, the last complete fiscal year or the average of the last three complete fiscal years. The rules also provide for the exclusion of depreciation costs of business-related expenses.

The need for precise guidelines for these calculations is important in avoiding situations where the self-employed business person is offered the minimum \$185 weekly benefit because, for example, he or she had a large capital cost allowance for tax purposes.

Expansion of disability insurance is not the solution. It has been suggested to us that the insurance industry could respond to the gap in the no-fault scheme for entrepreneurs and others by developing new disability products such as top-up benefits. While such offerings may have appeal, they should not supplant a right of tort action for pecuniary losses.

Nor should the cost of such additional insurance be totally unfettered. As time passes and inflation erodes the value of the prescribed no-fault benefits, the basic no-fault benefits will be viewed as less and less adequate and more people will understand the need for additional protection. But will they be able to afford the coverage? Policymakers must take great care that this configuration of auto insurance coverage will endure. The danger for the future is that two classes of insureds will emerge—those who can only afford the basic policy and those who are able to top up adequately.

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The government should also not count on great expansion of the number and coverage of small group and individual disability plans to solve the entrepreneur gap. Data from the Canadian Life and Health Insurance Association 1988 survey on disability policies, which covers most of the industry, shows that some 25,000 long-term disability group plans covering over two million employees were in place in that year in Ontario.

Short-term plans for 14,000 groups covered an additional 733,000 Ontario employees, but because of some overlap with the long-term disability the coverage cannot be summed. Additionally, some 173,000 Ontarians hold individual disability policies. These would be held primarily by owner-managers and the self-employed. Allowing for the possibility that some small business people have arranged small group plans, there is still a significant shortfall in coverage for our sector.

We doubt that the advent of threshold no-fault automobile insurance will dramatically increase the prevalence of general disability coverage, although it may have a mildly positive effect. The argument that the individual could become ill or fall off a ladder at home with the same result so that any prudent business person should be willing to buy this additional protection to cover all perils, not just the risk of being hurt in a motor vehicle accident, loses its power in the face of these actual statistics on coverage.

There are several reasons why not everyone will obtain disability insurance. First, not all entrepreneurs qualify for disability insurance. The screening process is rigorous on both the medical and financial criteria. Second, such insurance is very expensive, and as such is out of the reach of new entrepreneurs for some years. Third, while general disability insurance covers all occurrences, there is a greater element of personal control associated with safety around the home, and even with healthy living, which can be distinguished from the freak auto accident caused by someone else's carelessness.

There is something unsavory about forcing people to rely on their own disability insurance protection against inadequate auto insurance plans, yet this is the foundation of the so-called Ontario motorist protection plan. The collateral benefits provision dictates that "first payers" must be taken into consideration in calculation of no-fault benefits, including workers' compensation, any government or employer sick leave plan, or income continuance plans. Note that currently most disability contracts give the

carrier a right of offset, usually through a "co-ordination of benefits" clause.

Auto insurance pays last under the proposed scheme, at a maximum of 80 per cent of gross wages to the maximum \$450 per week. This "last payer" benefit must be anticipated to provide considerable savings to the insurance companies, since it permits a shift of cost to other insurance schemes. Consequently, disability insurance will almost certainly be more expensive and perhaps even more out of reach for the purchaser.

Cost shifting to workers' compensation: We are especially concerned about the adverse impact of Bill 68 on the workers' compensation system. Workers' compensation continues to be a key issue for small business, identified as a significant problem by about half of our members in Ontario.

Legislators will know that the total cost of the Workers' Compensation Board is covered by business through annual assessments amounting to some \$2.7 billion. Assessment rates in Ontario are high, averaging \$3.18 per \$100 of covered payroll, up from \$3.12 in 1989. The WCB carries an unfunded liability of \$7.4 billion, which amounts to over \$24,000 for every business in the province. The board's funded ratio, that is, assets as a per cent of liabilities, at 38 per cent is the lowest in the country. The plan to amortize the unfunded liability over 30 years to 2014 is at best precarious, and Bill 68 will not assist in this task.

The Canadian Federation of Independent Business has grave concerns about cost shifting from auto insurance to the WCB. The intention of Bill 68 is to eliminate the right to tort recovery except for fatalities or serious permanent disabilities. Therefore, workers injured in automobile accidents will no longer be able to take court action, nor will the WCB for many injuries. As a result the cost of these injuries will be borne by employers. For small firms the weight of WCB profit-insensitive payroll taxes is considerable and these taxes are reckoned into the decision to hire or retain staff.

CFIB is a founding member of the Employers' Council on Workers' Compensation and we are currently a member of the executive of that council. CFIB supports the position of the ECWC with respect to the impact of threshold no-fault automobile insurance on the workers' compensation system, and we will be joining the delegation from the council in its appearance before this committee tomorrow.

In conclusion, while CFIB supports the principle of threshold no-fault insurance for

automobile injury compensation, we have considerable concern about how several aspects of Bill 68 will operate in practice. The goals of efficient, equitable and certain compensation must be achieved in a way that preserves appropriate accountability for one's actions behind the wheel. Fairness also demands a more precise method of determining net business income for the purpose of setting the benefit level for business entrepreneurs and the self-employed. Unpaid family members working in the family firm need special consideration.

CFIB members are aware that there is no free lunch in this or any other realm. It is well understood that the way in which the government proposes to curtail the rising cost of automobile insurance is to limit compensation for noneconomic losses to all but the most serious of cases. What is not so obvious is that considerable cost shifting is contemplated to three additional groups: (1) automobile injury victims who sustain economic losses beyond the set benefit level or who have difficulty proving entitlement at the appropriate level; (2) companies and individuals and their life and health carriers as first payers of disability and income continuation benefits, and (3) the Ontario Workers' Compensation Board and its financiers, Ontario businesses.

We would be happy to receive your questions.

The Vice-Chair: Thank you. Mr Kormos, for three minutes.

Mr Kormos: Thank you, Madam Chair. You are pretty parsimonious when it comes to time.

Interjection: You have just lost 10 seconds.

The Vice-Chair: I am counting.

Mr Kormos: I have never lost 10 seconds in my life.

Strangely, we are going to find ourselves in agreement. It just pleases me end.

One of the illustrations of the impact of this legislation that we have been talking about—at least, the people in opposition—is on, for example, small entrepreneurs, the business persons whose businesses are primarily the result of their own labour and perhaps one or two employees; the really small entrepreneurs, as so many are. Someone is hit by a drunk driver. He has two broken legs—you have heard this, right—and cannot work in his shop or boutique or at his service or trade.

We had Steve Crouse, a fellow from Kitchener-Waterloo, here last week who did repair work. He cannot do that work any more. This person, like most small entrepreneurs, writes himself a cheque every week, which most

people would interpret as a paycheque, but really most of his profits are rolled back into the business. He is struck down by a drunk driver in a Jaguar, not just the little dumpy Jaguar but the Vanden Plas Jaguar, the expensive one.

This person may well collect the maximum of \$450 a week in income replacement, but that does not accurately reflect the real income or the real revenue that he was generating. He cannot work in his business, and it folds because it is a personality-oriented business. It takes five more years to restore him to the position he was once in. There is no compensation for the bankrupt business and no real compensation for loss of income or, more appropriately, lost revenue, and absolutely no compensation for that five-year period of time and all the struggling, the real cutting of corners and nip and tuck sort of struggling. There is no compensation for any of that economic loss. Yet no-fault is supposed to compensate, at the very least, for economic loss.

To boot, there is the indignity of it—struck down by the drunk driver in a Jaguar Vanden Plas.

The Vice-Chair: The question, please.

Mr Kormos: Yes, Madam Speaker. Struck down by the drunk driver in the Jaguar Vanden Plas. He got not a single penny for pain and suffering because there were only two broken legs. How does your organization respond to that inadequacy and injustice?

Ms Andrew: I should start off by saying that it is not so strange that we would agree on this item. We have agreed on many things in the past and disagreed on many others. It is clear we are not calling for pain and suffering or nonpecuniary losses here, but we are calling for the opportunity for entrepreneurs to at least be able to sue for their economic losses to put them in the economic position they would have been in had the accident not taken place. It would be extremely insulting if the bill were to stay in the form it is now and that small entrepreneur is wiped out, his business is wiped out. I certainly agree with you on that.

1620

Mr Runciman: I find your brief interesting, and a little bit strange and perplexing, I guess, in some respects. Your support of the principle of threshold, I gather, is based on the survey of your members which you outline in the beginning of your brief. I suspect that if you had phrased the question in a little more detail and perhaps pointed out, with respect to pure no-fault, which is really what you are talking about in your question, that workers' compensation is pure

no-fault—I found it rather ironic that when you talked about the problems you are faced with in pure no-fault through the Workers' Compensation Board, your members are supporting that kind of system with respect to automobile insurance. A fellow from Sudbury used to call the WCB a swamp and I guess that is one of the few times I ever agreed with that particular gentleman.

I want to say that in the future, when you are looking at the implications of these things for your organization and the positions you have to take before legislative committees, you may want to be more careful in the wording and perhaps a little more precise in the implications of the responses that you have to take to positions.

One thing you have not commented on—there are a number of things, and we have a very limited time here—is the question of taxpayers subsidizing this exercise. We are being told that we are going to get some sort of stabilization of rates and we are not going to see rates increase to the levels they would have otherwise if this program had not been instituted, but one clear indication is the \$143 million in the tax and OHIP breaks that the insurance industry is getting. There is a host of other subsidies, if you will, that are built into this program. I have said that there is going to be one other victim present at every accident scene in this province from now on if this bill passes, and that is going to be the taxpayer of this province.

I am very surprised that you, representing small business and faced with 105 per cent in terms of tax increases that the Liberals have brought in in this province in four years in government—now getting this other hidden subsidy digging further and further into the taxpayers' pockets—that an organization like yours, and I very much respect the job you do, but I am concerned that you have not touched upon that particular element. I would like to hear your comments.

Ms Andrew: Just turning to your first comment, about our member survey, I think it should be clear from the statement on page 2 that we were not able to ask our members about the exact configuration of Bill 68. What we have in this survey from 1986 is their impression of, as you say, a pure no-fault automobile injury scheme. That is the reason why we are supporting the principle of no-fault but at the same time examining the bill for its inadequacies, and obviously finding some.

It is never possible to ask about the exact configuration of a bill, because bills change at the last minute, and of course in committee. In any case, what we did take from this survey is the general support for the various goals that seem to be underlying this bill; that is, cost containment, safe driving and fairer and faster payments to accident victims. That is what our members support, not Bill 68.

On the other question, about OHIP breaks, you are quite right that there is a transfer to OHIP. I think there is a very much bigger transfer of the costs to the WCB, and we are going to be getting into that in more detail together with the Employers' Council on Workers' Compensation tomorrow.

Our point on cost shifting in general is that we do not know the magnitude of cost shifting to disability coverage, but there is some. We feel that it is wrong to shift costs from automobile insurance to all of these other schemes.

Mr Runciman: It is a shell game.

Ms Andrew: OHIP is another example of that. Although we should have noted it, we will note it for the committee at this point.

Mr J. B. Nixon: Thank you for your brief. I found it well researched and I think you raised some good questions, particularly with respect to the regulations which will describe the no-fault benefits, which are, as I understand it, still being drafted. They have been issued only in consultation draft form, back in September.

I want to explore with you your recommendation on page 7 that we utilize the Quebec approach to reimburse a victim working without pay in a family enterprise. Two questions: First, you say you "are advised that so long as the victim is unpaid and there is another family member working in the business, the victim qualifies for the reimbursement." Clearly, you still have to establish, whether or not that member was being paid, that he was working in the family business.

1630

Ms Andrew: Yes.

Mr J. B. Nixon: Second, can you explain to me the 180-day rule of presumed income? I am not sure I understand that.

Ms Andrew: The source of that is the Insurance Bureau of Canada. In fact, I have the section. I think subsection 8(3) of the Quebec act provides this \$500 reimbursement for a period of 180 days post-accident. At that point income is presumed, according to this source.

Mr J. B. Nixon: I am sorry?

Ms Andrew: Income is presumed for that individual, and then, more on a long-term basis, they go about fixing what the level is, using a chart. I do apologize. The details are sketchy. Even as late as yesterday we were getting more details in from the Quebec auto insurance scheme and the lawyers there.

The gist of our recommendation is to investigate this special treatment for family enterprises and emulate it for Ontario. We are not exactly sure about all the details about how it functions. In fact, it has just come into force as of January this year and I expect that there are a lot of people at la Régie de l'assurance automobile who do not know how it works exactly. But I think it is a measure of sensitivity to the circumstances of the family business person, and it would certainly bear investigation and recommendation by this committee.

Mr J. B. Nixon: I would commend it to the ministry too. I agree with you.

The Vice-Chair: Thank you very much to you both.

Ms Ganong: May I just say it is very heartening to see so many former members of the committee of parliamentary assistants for small business on this committee. I know you will take our considerations with great concern, especially the distinguished parliamentary assistant to the Minister of Financial Institutions.

Mr Ferraro: It is also very heartening to see former members of the Ministry of Industry, Trade and Technology working for the Canadian Federation of Independent Business.

Ms Ganong: Thank you.

Mr Ferraro: It is a mutual admiration society.

The Vice-Chair: Our next deputant is Jack Carr, professor of economics from the University of Toronto. Professor Carr, you will have 30 minutes. I might suggest to you that you allow approximately 15 minutes for your presentation, if it fits within that time frame, to allow plenty of time for questioning.

JACK CARR

Dr Carr: I will try my best. In fact, the previous presenter just gave part of my presentation.

Ms Andrew: We apologize for that.

Dr Carr: You do not have to apologize at all. It is perfectly fine.

I guess it is a shame to have an economics professor on at 4:30, economics being a dismal

science. Maybe I will quote statistics but hopefully I will try to keep you and our limited audience awake, given this late hour.

Before I really discuss the issue, let me just introduce myself. Some of you may know who I am. Brad Nixon, a former student of mine, definitely knows who I am, but the rest of you may not.

Interjection.

Dr Carr: Yes, Brad Nixon passed.

I am a professor of economics at the University of Toronto and I have been teaching there since 1968. In addition to my primary appointment in the economics department, I also teach in the law school. I have a long-standing interest in no-fault insurance and have been writing about no-fault insurance since its inception in North America. It first came in in North America in Massachusetts in 1971. In 1972 I published a book called *Sense and Nonsense: The Economics of Canadian Policy Issues*. It had a large number of Canadian policy issues and one of the chapters in that 1972 book was called, "The Shaky Case for No-fault Automobile Insurance." In 1972 I opposed no-fault automobile insurance and I still have those same basic objections in 1990.

In 1981 I completed a major study for the federal government on liability rules in insurance markets and currently I am still writing on no-fault insurance. I have an article about to appear in the *San Diego Law Review* on a symposium with O'Connell and Joost on no-fault insurance. So I have been working in this area for a long time.

Three years ago, just after the Slater report, I was retained by the Committee for Fair Action in Insurance Reform, an organization that has gotten a lot of publicity of late, and I have been an economic consultant to FAIR on no-fault insurance.

Let me try to address some of the issues in no-fault insurance. But before I do that, let me spend just a few minutes on a brief history of how we got to where we are. I think that if one wants to look at a brief history, one has to start with Slater.

The Slater commission was appointed in January 1986 by the Minister of Consumer and Commercial Relations. Slater, an economist, was appointed to seek out "solutions for cost and capacity problems in the property and casualty industry in Ontario." Although Slater's commission was appointed in January 1986, Slater issued his report in May 1986. He issued it after five months, and his study was the study of the

entire property and casualty industry, of which automobile insurance was only one small part.

Slater was under severe time constraints, mainly because at that time, you may remember, there was an insurance crisis, not in automobile insurance but in liability insurance for schools and hospitals, and Slater felt compelled to get his report out as quickly as possible. So automobile insurance was only a small part of the problem he had to deal with.

It is certainly true that Slater recommended no-fault automobile insurance, but because of the severe time constraints that he was under, Slater in fact recommended that no policy action be taken until much more study of this issue was undertaken. Along came Mr Justice Coulter Osborne to conduct this further study. The government appointed him in November 1986 to conduct an inquiry into motor vehicle accident compensation.

Mr Justice Osborne conducted the most extensive inquiry into motor vehicle compensation ever undertaken in Ontario. He released his report in February 1988, so clearly he spent a lot more time on just auto than Slater had the luxury to spend. Mr Justice Osborne specifically examined threshold no-fault and specifically examined plans such as the Ontario motorist protection plan, although a plan not as stringent. He unequivocally rejected such a system. "Threshold no-fault should be rejected because it is relatively inefficient and unnecessarily arbitrary. There will either be no or minimal savings on transaction costs in threshold no-fault." It is a very clear statement.

Now clearly, the government has chosen to ignore the main recommendation of the Osborne report. A number of government spokesmen I have heard in this hearing and in the press have argued that if Osborne were writing today, when claim costs are rising, instead of writing essentially in 1987, he would be in a different environment and he might be of a different opinion. I would like to comment on that and I think there are two arguments for that.

Osborne examined a proposed threshold no-fault system. He said that such a system was inefficient and arbitrary. If such a system was inefficient and arbitrary in 1987 and 1988, it is just as inefficient and arbitrary in 1989 and 1990. It does not depend on one year's worth of claims data. So Osborne's study of the no-fault system is as valid today as it was two years ago.

The second thing to note is the profitability picture of the Ontario automobile insurance industry. In 1987, according to the insurance

industry's own statistics—and the insurance industry tends to overstate losses and understate profits, not to mislead anybody but to try to minimize its tax liability, something that any profit-maximizing firm would try to do if it could get away with it.

In 1987, when Osborne was writing, the insurance industry lost \$142 million, according to its own statistics. In 1988 it lost \$408 million. This year it is estimated to lose \$100 million, so losses this year are predicted to be about \$42 million less than they were when Osborne was writing. It is hard to see how the profit picture has substantially worsened so that Osborne would change his mind. I firmly believe that conditions have not changed and that the Osborne conclusion still holds.

In March 1989 the government asked the Ontario Automobile Insurance Board to examine three no-fault schemes. In July 1989 the OAIB issued its report. Although the board was specifically asked not to draw any conclusions as to the merits of the three options it was to consider, it is clear that the OAIB had serious misgivings about threshold no-fault. They warned that any savings that could result from such a scheme would only come from reducing benefits to injured accident victims.

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Having looked at that brief history, let me look at some of the major issues with respect to Bill 68. First, an issue that has been a big issue of late in the press is that the Ontario motorist protection plan will result in significant administrative cost savings and, in particular, major savings in lawyers' fees. In front of the OAIB, one heard a figure of \$400 million in lawyers' fees. Lately, one has heard a figure of \$500 million in fees that lawyers earn from the automobile insurance system.

I have serious reservations about those statistics, but let me not argue about them. They are red herrings. The relevant issue is not what lawyers earn from the system. The relevant issue is what will be saved in lawyers' fees by the Ontario motorist protection plan. That is what we care about: the cost efficiency. I have seen no studies of late to indicate what that savings would be. The only study I have seen—essentially, there have been two; the more thorough study was Osborne's. Osborne, in fact, collected all the data on lawyers' fees and the data that everybody uses come from Osborne.

Here is what Osborne had to say about that issue. He said threshold no-fault was "relatively inefficient.... There will either be no or minimal

savings in transaction costs in threshold no-fault." When he looked at pure no-fault, Osborne said he thought there might be some saving and he said it might be five per cent; but not, he said, with threshold no-fault. With threshold no-fault, the big problem was that you have litigation over the threshold. When he looked at Michigan and he saw all the litigation, he said there would not be any efficiency savings. So all this talk about how much lawyers take out of the system does not make any difference if there is not going to be any reduction in what lawyers take out of the system in the Ontario motorist protection plan.

Osborne, conducting the most thorough study, said "no savings." Not only did Osborne say that; it is important to understand that the OAIB concurred with Osborne. The OAIB gave the following advice: "It is extremely important that the government be aware that any cost savings forecast by this report arise almost entirely from a reduction in benefits payable to injured claimants, rather than as a result of any increase in efficiency of the proposed systems of insurance compared with the existing system."

So both Osborne and the OAIB said we are not going to get any efficiency gains from threshold no-fault; the only way we are going to get gains is from reduction in benefits to innocent accident victims. That brings me to my next point.

The most important saving under the Ontario motorist protection plan comes from the reduction in benefits to innocent accident victims. The 90 to 95 per cent of innocent accident victims whose injuries do not pass the threshold will get no compensation for pain and suffering and loss of enjoyment of life. To these innocent accident victims, this compensation represents 60 per cent of their total compensation.

So with one stroke of the pen, Bill 68 eliminates over 60 per cent of compensation to these innocent accident victims. This will save the insurance companies \$480 million a year. If you want to know what the single largest source of savings in the Ontario motorist protection plan is, it is from the reduction in benefits for pain and suffering to innocent accident victims.

I was sitting here when I heard reference to testimony by Professor Craig Brown this morning. He said maybe there is a tradeoff here; maybe we should trade off those benefits for increased rehabilitation and long-term care benefits. You should understand what the tradeoff is. In front of the OAIB, they estimated what the costs of those medical and rehabilitation benefits and long-term care benefits were, and they were estimated to cost \$85 million.

So what was happening in the tradeoff is that innocent accident victims, just for pain and suffering, are giving up \$480 million of benefits for \$85 million of benefits. I would argue that is not a fair tradeoff. That is not something I would choose. If I were asked the question union leaders were asked, I would say I would want both, but if I had to take one and only one, I would clearly want \$480 million worth of benefits rather than \$85 million worth of benefits.

Now not only is that part of the tradeoff, not only is there a loss in pain and suffering which the OAIB said is a real loss, just as real as wage loss, and should be compensated for, we should not discriminate against people under the threshold and give them nothing for pain and suffering and give people just above the threshold something. It does not make any sense. It is arbitrary.

There are other savings that come from inadequate compensation for economic loss. When the Insurance Bureau of Canada first proposed threshold no-fault, it always said you could sue for excess economic loss. This does not appear in the plan. So we have benefits which are capped at \$450 a week, we have benefits which are not indexed and you cannot sue for excess economic loss. So not only do you not get benefits for pain and suffering if your injuries do not pass the threshold, you get inadequate economic benefits, and a number of groups here have mentioned these.

This brings me back to the OAIB warning that any savings to be had only come from reducing benefits to innocent accident victims. This is a message that this committee should understand and that the people of Ontario should understand. The question is, is the tradeoff worth it? Look at what is happening. Benefits to innocent accident victims are being reduced. One wonders why the government chose the name Ontario motorist protection plan. One wonders what ad agency was hired to come up with that name, because it clearly does not protect Ontario motorists. It gives them a major reduction in benefits, and that is something that should clearly be understood.

Bill 68 not only reduces benefits to innocent accident victims, it also represents a major change in tort law for automobile accidents only. This is where I may take my economist's hat off and put sort of my lawyer's hat on. I am not a lawyer, but I am involved in law and economics and I teach in the law school. Currently, negligent parties have to compensate innocent accident victims for losses. Now, for automobile accidents, this will not be the case. A negligent

driver will be relieved of the responsibility for a large amount of the bodily injury, property damage and economic harm and loss imposed on innocent accident victims.

If a drunken boat driver runs into me on Lake Simcoe and causes injuries to me, I can get full compensation. If you put that same drunk in a car and he runs into me on the roads of Ontario and I have injuries, the same injuries, which do not pass the threshold, I get no compensation for pain and suffering and inadequate compensation for economic loss. That, I argue, is unfair. That, I argue, is arbitrary, and I argue that this makes no sense whatsoever, to change tort law, but to change tort law only in this respect. This is what Ralph Nader said, that tort law acts as a regulator of economic conduct and one does not want to get rid of this.

Another thing I want to talk about is increased accidents. I am going to argue that the Ontario motorist protection plan will result in increased accidents, and I have heard the evidence here. Some people say no, some people say it cannot be empirically measured. Let me give you the theory and let me give you the empirical evidence.

The theory is relatively simple. Relieving negligent drivers and their insurers of responsibility for a large amount of the bodily injury, property damage and economic harm and loss imposed on innocent accident victims will result in lower premiums for high-risk drivers. This is because high-risk drivers, although they are high risk to society, are not high risk to their insurer, because when this high-risk driver runs into you and causes bodily injury and property damage to you, if your injuries do not pass the threshold, you have to collect from your insurer. You do not collect from his insurer. His insurer is relieved of that responsibility and hence that high-risk driver represents a better economic risk to his insurer.

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The government hopes to forestall the undesirable effects of Bill 68 by regulating the insurance industry. It has recommended that you put in mandatory surcharges for high-risk drivers and that this be a role of the new insurance board. I studied price controls and regulations in a number of industries for a long time and I know the difficulty that price ceilings have. Look at the difficulty in this province with rent ceilings. But price floors, which this would be—a minimum price you have to charge a high-risk driver—almost never work. They are impossible.

Suppose the economic price for a high-risk driver is \$2,000 under the Ontario motorist

protection plan and suppose you propose a surcharge of \$1,000, so he should be charged \$3,000. The problem is there are 150 companies selling and they will compete with one another. They will say: "It only costs us \$2,000 to insure him. Instead of charging him \$3,000, let's undercut it. How can we undercut it and still live with the regulation?"

The way you do it is you change the rate category or you say, "Okay, I'll sell him insurance at \$3,000, but I'll give him his home insurance at \$1,000 less." There are all sorts of ways. Any time you try to plug one, something else will happen. Look at the difficulty one has now controlling the insurance industry. Look at the insurance industry getting around the controls by flipping companies. One cannot control them now. That is a big problem with the system now. I argue that one should not be regulating and controlling an industry which is as competitive as the insurance industry with 150 insurance companies.

So the major prediction of law and economics literature is that there are going to be more accidents because there will be more high-risk drivers on the road. What do the empirical studies show? I could quote you a number of studies. I have heard people say, "Osborne said it couldn't be empirically determined." After Osborne wrote his study, there was a major study done of Quebec no-fault. It was a study by Professor Rose Ann Devlin, at 300 pages the most comprehensive study ever undertaken of the Quebec no-fault system.

Here is her prime conclusion: "The care taken by drivers is shown to have decreased significantly after no-fault, resulting for instance in a 9.62 per cent increase in fatal accidents. The conclusion reached is that the liability system and the presence of liability insurance does indeed deter accidents."

This committee cannot really go and examine complex economic models. That is not its role. But the OAIIB looked at this, the OAIIB examined this, the OIAB heard evidence on it and cross-examination on it. Here is the conclusion of the OIAB: "The board is persuaded that the study conducted by Professor Devlin, concerning the effect on accident rates of the introduction of a no-fault system of insurance in Quebec, lends further credence to the proposition that no-fault systems will result in an increase in accident frequency."

The OIAB heard not only that evidence but evidence by Elizabeth Landes, on threshold systems in the United States, of a two to five per

cent increase in fatalities, evidence from a Peter Swan study and evidence from a study by Professor McEwin, in New Zealand and the Northern Territory of Australia, which indicated a 16 per cent increase in fatalities.

The OAIIB concluded, "The board is of the opinion that the proposed systems will result in increased accident frequency." So when people say there are no empirical studies and you cannot measure it, that is not true. I ask them to read the studies. They are there; the evidence is conclusive. This is the most accepted academic evidence around.

Another issue: "Most road accidents are due to momentary inattention." I have heard that again and again. I defy anybody who wants to argue that to find the statistics for that, because every statistic I look up does not jibe with that. When I look up statistics on alcohol, I find that 40.6 per cent of drivers killed in Ontario automobile accidents in 1987 were found to be under the influence of alcohol. Was this the momentary inattention of the drunken driver, because he could not keep his eyes on the road, that people are talking about? I do not know.

In addition, many accidents are caused by driving at excessive speeds, following too closely or other contraventions of the Highway Traffic Act. The Honourable William Wrye, Minister of Transportation, wrote just recently that excessive speed is a major factor in accidents causing fatalities, severe injuries and property damage. So it is not momentary inattention. Those who argue that are appealing to our fear that we could all be involved in automobile accidents. We could all have our child beside us and take our eyes off the road, but that is not the cause of serious accidents. Serious accidents, which cause the primary damage, are caused by alcohol and are caused by excessive speeding, and these accidents should be dealt with.

If you believe in momentary inattention, what is the government's policy of increased fines and increased OPP officers going to do? How would increased fines help momentary inattention? How would more police officers help momentary inattention? Are they going to ride beside mothers with their babies beside them to check to see when they take their eyes off the wheel and honk at them? It makes no sense whatsoever. If you believed in momentary inattention, if you honestly believed in it, insurance companies would charge everybody the same rate because everybody would be equally likely to have an accident. That is not the case; that is definitely not the case. They rate some people higher

because some people are more likely to have accidents.

Innocent accident victims should not be treated the same as negligent drivers who are the cause of their own misfortune. To a large extent, this is done under the Ontario motorist protection plan. The Ontario motorist protection plan, it is argued, is a unique approach, a made-in-Ontario approach. I would argue, from looking at all the evidence in North America, that it is not the case. This is very much like the Michigan system. Threshold no-fault was invented in the United States, but this is a much more stringent system. If threshold no-fault made any sense, it would make some sense in the United States, where injured accident victims may not be able to afford to pay the medical bills for their injuries. That is not the case in Ontario. Threshold systems make no sense whatsoever.

The Vice-Chair: Professor Carr, if I may interject just briefly, you are approaching the five-minute point and I would suggest that you allow some time for questions.

Dr Carr: I am actually finished now.

Mr Kormos: No, we can wait until after five.

Dr Carr: I hoped that questions would wait, but actually I am finished now. I will wrap up in a minute or so.

The Vice-Chair: Okay, please go ahead.

Dr Carr: I would argue that the essence of this plan is that you are getting the same premiums in return for greatly reduced benefits. That is the essence of the plan and that should be understood. In analogies I have given before, you can sell half a loaf of bread at the same price—this is, in effect, doubling the price of a loaf—and because the insurance product is so difficult to understand, the Ontario insurance consumer may not understand that he is getting half a loaf. This committee should understand that what it is offering Ontario drivers is half a loaf and you have to be convinced that this is what you want to offer Ontario drivers to solve the political problem; half a loaf of insurance coverage.

This plan protects you. This is a protection plan. Provided you do not have an accident, you are fine. But once you have an accident, there is minimal protection in the Ontario motorist protection plan.

Mr J. B. Nixon: Professor Carr, it is good to see you again.

Dr Carr: It is nice to see you.

Mr J. B. Nixon: You are aware that many people have looked into this issue along with yourself. Are you aware that a previous select

committee of this Legislature, the select committee on company law, looked at this issue?

Dr Carr: Back in 1977?

Mr J. B. Nixon: In 1977-78.

Dr Carr: I am aware of that.

Mr J. B. Nixon: It was an all-party committee. Jim Renwick was on it and Sam Cureatz was on it. Are you aware that they concluded:

"The committee is particularly impressed with the capacity of the no-fault system to compensate all victims, regardless of fault, rather than paying only the relatively innocent. It is also impressed with the capacity of no-fault systems to reduce adjusting and settlement costs by minimizing fault investigation, so that a significantly larger portion of the premium dollar will be returned to the public in claims payments. The committee accordingly recommends that 'fault' should no longer be the fundamental factor to be considered in determining whether compensation should be paid for motor accident losses."

Dr Carr: Yes, I am aware of that study. That study was mostly theoretical, without looking at the facts in Ontario. The only study which really looked into dollars and cents and looked at administrative cost savings was Osborne, and in a sense some of it was done again by the OAI. Those are the two most recent studies and those are the two most thorough studies and those are the two studies which did the empirical work. Those studies rejected threshold no-fault, primarily because it was inefficient. You did not get these administrative cost savings. The Osborne committee said there would be some savings, and he estimated about five per cent, from pure no-fault, but he was objecting to pure no-fault because the deterrence issue is even more severe a problem there.

1700

The interesting thing is the studies that investigated this plan, because the 1977 studies did not specifically investigate threshold no-fault. The Osborne study investigated a plan the IBC put forward which was capped at \$600 for the benefits, more generous than this, which had benefits that were indexed—the capping on the index was six per cent—and under which you could sue for excess economic loss. That plan was rejected by Osborne as being too severe, as restricting too many serious injuries, precluding them from getting recovery. If that plan precludes too many serious injuries from getting recovery, what do you think this plan is going to do?

Mr J. B. Nixon: I have a subsequent question for you, quickly.

Dr Carr: I will stay as long as the committee wants.

Mr J. B. Nixon: In paragraph 3.2 on page 5 you suggest—

Dr Carr: Is this in my report?

Mr J. B. Nixon: Yes. You suggest that “the negligent driver will be relieved of responsibility.” What I do not understand is how that occurs. I put it to you that the vast majority of motorists are insured, so they are relieved right now, because they have an insurance policy, of any direct liability or responsibility for that bodily injury.

Of course they are still subject to highway traffic fines, penalties, jail sentences and perhaps Criminal Code convictions. Of course there are all sorts of deterrents that exist around them, and perhaps one of the greatest deterrents in any system is the fear of loss of your own life or personal injury. That is probably the biggest deterrent. Who cares what insurance policy exists or does not exist? Everyone is worried about his own personal safety. I put it to you that is the biggest deterrent.

But the fact that I have an insurance policy behind me, as you know, relieves me from direct financial responsibility for the losses suffered by the other party. The whole premise, I put it to you, of what you are telling this committee is based on an assumption that does not hold up in reality. The direct responsibility does not exist in economic fact.

I do not want to talk about economic theory. I do not want to talk about legal theory/ I want to talk about economic fact. If I hit someone in an accident and you go to court and prove I am at fault, the losses that other person suffers do not come out of my pocket. I have an insurance company, whether it is public or private, that pays for that.

Believe me, I do not think you will find many of your colleagues or many of my constituents who are walking around saying, “I’m really worried about having a traffic accident because I’ll have to pay for the other guy’s injuries.” They are worried because of highway traffic convictions, Criminal Code convictions, loss of personal life or personal damages.

Dr Carr: Let me answer that. That has been a prime question in the law and economics literature. To what extent does the existence of insurance dull its deterrence function?

Anybody who insures never insures 100 per cent. What they do not insure in the case of an accident are the injuries to the negligent driver. If he is involved in an accident, two things happen. His injuries are not covered and that acts as a major deterrent to him, plus his premiums go up, and go up substantially, and that acts as a major deterrent. Drivers in Ontario are worried about their premiums going up and going up substantially as a result of an accident. That is the problem.

Let me read you the conclusion from Devlin. “The conclusion reached is that the liability system in the presence of liability insurance does indeed deter accidents.” The major conclusion of this report was that you do in fact get this deterrence.

This is not only the major conclusion of this report; this was the major conclusion of the study in New Zealand. In that study in New Zealand the same issue arose. It said, and this is quoting from McElwin: “The abolition of a common law tort of negligent action was associated with a 16 per cent increase in the number of road fatalities per head of population. The result should concern those who discount the role negligent liability plays in promoting safety.”

Everybody discounted it because of the existence of insurance and the empirical studies—and I am not talking theoretical; I am talking the actual, cold, empirical studies—said that the tort system in the presence of liability insurance does indeed deter.

Mr J. B. Nixon: It is my understanding that all they have ever established is correlation, that they have never established causation.

Dr Carr: No. I may have taught you that correlation does not imply causation.

Mr J. B. Nixon: Yes, you did. That is what you taught us.

Dr Carr: This is a model, but this is a model that does not look at correlation. It looks at all the various factors and independent variables. It has a whole model and it tests for these things. I will tell you that this model has been looked at and examined by economists and lawyers and academics throughout North America and it is found to be convincing. The studies found it convincing that the tort system in the presence of insurance does indeed deter. It is not simple correlation; it is not based on simple correlation.

Mr Kormos: You wrote and you spoke that in 1987 the insurance industry said it had lost \$142 million.

Dr Carr: That is correct.

Mr Kormos: When Mr Kruger was here, I said: "Mr Kruger, how can this be? Your board said in 1987 that the auto insurance industry in Ontario made money and they are saying that they lost money." From a simple point of view, it looks like they are liars. Now they are saying that in 1989 they are losing—mind you, less than what they lost in 1987. Does that mean that in reality they made more than they even did in 1987, that when they say loss it means profit?

Dr Carr: I would say without looking at the numbers—you would have to look at the numbers to get an exact answer—my intuition would say that they are making more profit in 1989 than they did in 1987.

You should understand what the source is. It is not a difficult thing. In the insurance business you are paying out most of your claims two years from now, three years from now, four years from now. You are getting your money in now but you are not paying it out for two, three, four years down the road.

Let's suppose you estimate you are going to have a claim that you are going to pay \$1 four years from now. The insurance companies put it on their books at \$1 now. They should be discounting it. They should put it on their books at 60 or 70 cents, depending upon what market interest rates are. Because of that, their reserve figures are too high, and if their reserve figures are too high, their losses are too high. That is the essence.

They are not doing this, as Ralph Nader would say, to necessarily mislead any regulatory authority. They are doing it because as long as they can get away with it with the federal government—the federal government has recently changed the rules; it does not allow them to fully do this any more—to the extent they do get away with it, they minimize their tax liability. It is not surprising they engage in this behaviour.

The Vice-Chair: In view of a kind heart and the fact that Mr Nixon had a supplementary, I will allow you one final supplementary.

Mr Kormos: That is right. I know it was your kind heart, not Mr Nixon's. There is not a kind cell in his heart.

In any event, that confuses me then because the auto insurance people say that the reason we have to reduce benefits—really, when you cut away all the baloney, you realize that is what they are saying, "We've got to pay out less because if we don't, my goodness, we just won't be able to pull it off." In their ads—there are \$35,000 to \$50,000 worth of ads in this morning's papers

alone—they talk about the need to increase rates by up to 35 per cent. How can that be if they are not really losing money under the present system?

Dr Carr: Even if you make money, you still have to make a fair rate of return. The argument they would make is that even though they are making profits, they could be making more profits in other sectors of the economy and therefore they need more.

I should say this: This 30 to 35 per cent figure comes from actuarial reports. Once you understand the economics of this business—in 1980, 1981 and 1982 insurance companies get actuarial reports that say, "You should charge X dollars." But there are 150 companies selling insurance out there and market conditions may be such that the market price is 10, 15 or 20 per cent below what their actuaries say.

The problem that actuaries have—you may have actuaries here and you may get confused with the numbers. Their big problem is that they know what accident rates are this year, but they do not know what they are going to be next year, and that is the big thing they have to forecast. Accident rates may have gone up by six per cent this year and the problem they have is, will they continue to go up next year? Will they fall? It is a risky business, so the actuarial numbers are subject to a large amount of uncertainty.

Insurance companies do not follow that. Those actuarial numbers that said you need a 30 per cent rate increase do not mean that if you eliminate the regulation, insurance companies would automatically go to that. They may only increase rates by 10 per cent or 15 per cent.

As an economist, and I am a free market economist, when I see 150 insurance companies out there, I see it as a competitive industry. I see it not as an industry we should be regulating; I see it as an industry where we should be allowing them, allowing market forces, to control the rates they charge. I would tend to think that if you allowed full market forces they would not increase their rates 30 per cent to 35 per cent.

If you give them what is in this plan, with this major reduction in benefits, their profits are going to skyrocket. I must tell you honestly that I phoned my broker up to find out what insurance companies are listed to see what stocks of companies I could buy, because I believe their profits would go up and go up dramatically as a result of this. These companies, I believe, will gain dramatically from the enactment of Bill 68 if it does not go with substantial amendments.

The Vice-Chair: Thank you very much for your presentation. This committee stands adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1711.

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Hansard

Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Wednesday 17 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Wednesday 17 January 1990

The committee met at 1000 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and try to live up to the habit of starting on time. I will call Professor George Priest from Yale Law School, if he would come forward. The committee has his presentation and the clerk has distributed it. For the next half-hour, in terms of presentation time, could you keep your remarks to about 15 minutes and allow 15 minutes for some comments and questions from committee members. Other committee members will be joining us as we start. We are yours for the next half-hour.

GEORGE PRIEST

Dr Priest: I am very happy to be here. My name is George Priest. I am the John M. Olin professor of law and economics at Yale Law School and the director of the program in civil liability at Yale Law School. I teach tort law and insurance at Yale and I have extensively studied for many years the auto no-fault issue as well as other insurance issues. I was a consultant to the Slater commission, I presented testimony to the Osborne inquiry and I testified extensively before the Ontario Automobile Insurance Board hearings on these issues.

I am appearing this morning at the request of the Committee for Fair Action in Insurance Reform, but I do not speak for it in any way. I insisted as a condition of my appearance that I present only my personal views and that is what I will do this morning.

May I say at the outset that coming from south of the border, I have always had extraordinary respect for the Canadian legislative process. Indeed, in the past it seemed to me something of a model of a rational, deliberative, democratic process, unalloyed, as so typically happens in the United States, by the demands of special interests or by efforts to capture the fleeting attention of the public through the media. But I must say I am discouraged by the government's strong support

for this bill and for what I view as increasingly strained efforts to justify no-fault.

I am here today to inform you about the auto no-fault experience in the United States, which has been extensive. There have been various different forms and versions of no-fault enacted over long periods of time in the United States, but I must report that the United States experience with no-fault has not been successful.

No-fault of course leads to an immediate drop in insurance premiums, but it is a onetime drop. Subsequent to the drop in premiums, for predictable insurance reasons, premiums begin to rise again. Indeed, it has been shown that they rise faster and have risen faster in no-fault jurisdictions in the United States than in fault jurisdictions in the United States. Though there are differences by jurisdiction, after short years premiums end up being higher in no-fault jurisdictions than comparable premiums in fault jurisdictions. As a consequence, no-fault is no more than a temporary remedy for the problem of excessive auto premiums.

Now, why is this so? It is not a mystery. The basic theory of no-fault is flawed. The basic theory of no-fault is that there is a lot of excess fat in the fault system, that the fault system spends too much time and too much expense on determining liability and devotes not enough of those expenditures to benefits. The proponents of no-fault support this version, this theory, by contrasting cases litigated to a full trial and judgement under a fault-based system with swift no-fault recoveries. But this comparison is misdescribed. There are some cases under fault systems in which there are substantial litigation expenditures incurred, but there are two points that should be recognized here.

First, there is a lot of litigation under a no-fault system, especially under a verbal threshold such as that of Bill 68, as we have seen in Michigan in the United States where a verbal threshold similar to that of Bill 68, though not quite as draconian, has been in effect for many years.

Second, and I think more important, the number of cases under a fault system in which litigation expenses are heavy and large are very rare. Under a fault system, 97 to 98 per cent of cases are settled before trial by a process very similar to settlement under a no-fault system.

That means that only two to three per cent of cases are litigated under a fault system, and it is on those two or three per cent of cases that all of the litigation savings have to be obtained. It is very difficult. In the United States it has proved to be very difficult to obtain substantial litigation expenditure savings from two to three per cent of cases.

As a consequence, once one finds not much savings in litigation expenses, the theory of no-fault has to be expanded, and it is expanded typically, as here in Bill 68, from no-fault to no pain and suffering. Here no-fault becomes a form of sleight of hand rather than a true law reform. Precluding recovery of pain and suffering damages for all who fail to surpass the Bill 68 threshold does not reduce the extent of pain and suffering. Instead, Bill 68, like auto no-fault thresholds in the United States, merely shifts pain and suffering losses from the drivers whose negligent driving caused those losses to the victims of negligent driving.

There are neither economic nor moral grounds for denying victims' recovery for pain and suffering losses. Pain and suffering is a real loss. No humane individual would prefer a society with more pain and suffering rather than less. Why is it necessary to deny pain and suffering? Because one cannot get insurance premium reductions if pain and suffering is not denied. It is here that I am disappointed with the Canadian legislative process, as I have been disappointed in the United States.

Bill 68's denial of pain and suffering damages in order to reduce insurance premiums is essentially arbitrary. There is no greater justification for reducing insurance premiums by denying recovery of pain and suffering than by denying recovery of other types of losses. Admittedly, the citizens of Ontario, like the citizens of the United States, want lower auto insurance premiums. But would it be defensible to rule that victims who have suffered, say, broken legs should be denied recovery because citizens of Ontario want reduced insurance premiums? Would it be defensible to rule that victims who have suffered, say, back or neck injuries, or any other type of injury, should be denied recovery because the citizens of Ontario want reduced insurance premiums? Bill 68 in fact tells victims who have suffered pain and suffering that they are being denied recovery because the citizens of Ontario insist upon reduced insurance premiums.

Indeed, Bill 68 is arbitrary on its own terms. As I take it others have testified, Bill 68 denies recovery of an important element of personal

injury loss but allows full recovery of property loss. Under Bill 68, as under many no-fault bills in the United States, a person rear-ended by a negligent driver receives full compensation for the dented fender but only roughly half compensation for the accompanying neck injuries. Why? Again, because citizens of Ontario, like those of some jurisdictions in the United States, want lower insurance premiums. There are no moral or economic grounds for this preference.

What is the effect of denying pain and suffering damages in this way? One effect, as I have emphasized so far, is systematic undercompensation of loss. But there is one other very important effect, and that is the effect on the accident rate. The principal effect of shifting losses such as pain and suffering—it is true of any other loss—away from drivers who cause them is to lower the cost of driving for high-risk drivers.

Whatever the insurance rating system—it does not matter what the insurance rating system is—high-risk drivers will benefit at the expense of low-risk drivers under a Bill 68 no-fault insurance plan. The premiums for high-risk drivers will go down and the premiums for low-risk drivers will go up. The low-risk drivers of the driving population, those individuals whose driving records are better, who drive more safely, who drive less frequently and who are less likely to be at fault in collisions, will find that their insurance premiums, coupled with their potential pain and suffering losses, are higher under no-fault than under a fault-based system.

It follows directly from this proposition that under Bill 68, just as under the no-fault systems in the United States, the accident rate will go up. Any time a system subsidizes high-risk drivers at the expense of low-risk drivers the accident rate will go up. This has been true in the United States and it is the reason premiums have risen more rapidly, and can be expected to rise more rapidly in Ontario, under no-fault than under a fault-based system. Indeed, because Bill 68 and the threshold it defines are far more draconian than any United States system and far more draconian than Michigan's threshold, the effects in Ontario will be greater.

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To the extent that auto no-fault systems have denied recovery of real losses to victims in the United States, they will deny recovery of real losses to larger numbers of victims if Bill 68 is enacted. To the extent that auto no-fault systems have reduced driving costs for high-risk drivers in the United States, they will deny recovery of real losses to larger numbers of victims if Bill 68

is enacted. To the extent that auto no-fault systems have increased the accident rate in the United States, I will predict—I will come back in five or six years to see if this works out; I believe very confidently that it will—the accident rate will increase more extensively if Bill 68 is enacted.

The supporters of auto no-fault in the United States are well meaning, as I am sure they are in Ontario, but auto no-fault achieves the ambition of lower insurance premiums essentially by deception. Again, the true savings in the reduction of legal expenses is typically very small. The reduction in premiums appears significant, however, because an important element of real costs, pain and suffering, is not eliminated but rather is shifted from a system that records such losses as it imposes them on high-risk drivers to a system that conceals such losses as it compels victims to silently suffer them without compensation.

The ultimate effects of no-fault on the driving population, however, are clear, I think, and irrefutable. Premiums for high-risk drivers will decline; premiums for low-risk drivers will increase. The proportion of high-risk drivers in the population will increase; the proportion of low-risk drivers in the population will decline. Necessarily, the accident rate will increase and premiums will begin to rise again. This has been the experience in the United States with no-fault. If Bill 68 is enacted, this will be the experience in Ontario.

Mr Kormos: I do not want to involve you in the sordid politics surrounding this particular issue. Enough said about that. You say that you are puzzled because Bill 68 is so much more draconian than even in Michigan. I should tell you that the insurance industry in this province made strong submissions back in 1987 and a little bit prior to that requesting a threshold no-fault system that was primarily based on the Michigan model. What the government has done here, because there has been strong criticism of the government for not being responsive to the community, is that it has highballed, so that when this process is over and done with they can tinker with it, lower the threshold to, let's say, the Michigan standard, maybe index the no-faults, and appear to have responded to public dismay about the legislation.

The insurance industry in this province has been under criticism for a long, long time. Even this government talked about the shabby treatment of consumers in the marketplace by the insurance industry and about a need to rectify that. Lately, they have been showing up here, of

course, supporting Bill 68, as I have said before, like the person convicted of murdering both his parents who then pleads for mercy to the judge because he is but an orphan. They have been promising, "We know we have been bad but we are not going to do it again."

You talk about the impact on low-risk, high-risk. We have a Facility Association, a creation of statute, where high-risk drivers are purportedly referred. What we have experienced in the last couple of years is that more and more good drivers have been forced into Facility for a variety of reasons, essentially because their insurers refused to renew them. The insurers are, in the words of some people, cherry picking. In my words, having worked in the mines, they are high-grading. They are readjusting their actuarial tables.

Don McKay, the general manager of Facility Association, and Mr Justice Osborne, who conducted an extensive investigation of auto insurance, have both predicted that as a result of this legislation more and more good drivers are going to be forced into Facility because insurers are going to use avoidance techniques or avoidance tactics to avoid senior citizens, unemployed people and people employed in job areas where they do not have strong disability payment programs available from their employer, because these in effect subsidize the insurance industry. Senior citizens, women, unemployed people, entrepreneurs, small-business people are going to be denied regular insurance, forced into ultra-expensive Facility, not because they are bad drivers but because they are good drivers who do not have employer-provided disability plans. Does that coincide as well with what you have suggested?

Dr Priest: Absolutely. It has not been as serious a problem in the United States of course, because the United States has much more limited outside benefits available to workers, to the retired or to others. I do not think any of our no-fault plans have had as severe collateral benefit provisions as does Bill 68, as you are talking about here. That has not been a problem in the United States, but I certainly agree with you that is very likely to be a problem here. If rates are inadequate and insurers feel they have to cut somewhere, that is where they will cut. Absolutely.

Mr Kormos: The government has been criticized by a number of organizations, and indeed by opposition parties, for its failure to address the real problem, which is the frequency and number of auto accidents. There is an

attempt in the propaganda accompanying this package to create the impression that auto accidents are inevitable, that they are just going to happen. As a matter of fact, the comment is used that they are so often the result of momentary inadvertence.

Rather, our view is that auto accidents by and large are the fault of bad drivers and that unless you address, among other things, the standards that are to be met before a person is permitted on the road—we have incredibly low standards in this province. You have to be literate and you have to be able to weave your way through some pylons in a plaza parking lot. If you can do that at 24 miles an hour, you get your licence and you are put on to Highway 401, on to four-, six- and eight-lane highways, on to icy roads and white-out conditions.

We are insistent that if the government were to respond to the need for upgrading standards for new drivers, there would be a significant impact, that this alone would generate a significant impact on insurance rates in the province. Can you comment on that.

Dr Priest: I agree with that entirely. I am a very strong proponent of any type of regulation that cuts down the number of high-risk drivers on the road. I think that is the most important way to keep insurance premiums low. I know there are some features of this entire legislative package that also serve to try to restrict high-risk driving to some extent, but my points really can be made even without regard to those or in addition to anything that is done to cut down high-risk drivers.

In Ontario, as in the United States, I think we need to do everything we can to cut down the number of high-risk drivers on the road, to keep them off the roads. Subsidizing them through a no-fault system is not the way to do that.

Mrs LeBourdais: Professor Priest, thank you very much for coming up. I guess I am endeared to you in that as an American you come up and say you love Canada. I guess we are always accused of having a bit of an inferiority complex up here, which I do not support, but it is nice to see we are loved south of the border.

I have two specific questions. First, how is pain and suffering recompensable? Yesterday we had very compelling testimony by a young man who is handicapped as a result of a car accident. He did not feel, and neither did his father who was with him, that he would meet the threshold. We, on behalf of those who are supporting no-fault insurance, did feel he would meet the

threshold and certainly so did the insurance companies.

In today's Toronto Star, it said, "Jeremy's future rests on a \$250,000 settlement extracted from"—a specific insurance company—"after a four-year legal battle." That \$250,000 is not going to give him a great nest egg for the future. It is not going to give him back his legs. It is not going to ease the pain and suffering. Once legal fees, miscellaneous costs, etc., are deducted from that, he is not going to be left with a great deal. Yet under the new system, certainly his rehabilitation and all of those kinds of costs would not only have been covered, but would have been well under way by now. Going back to my initial question, how do you think pain and suffering is recompensable?

Dr Priest: You are quite right that in situations where people have suffered severe injuries of any type, there is no true way to recompense. It is not like restoring lost income, putting money back in the bank. Pain and suffering does not serve that purpose, but it serves other purposes. It serves to recompense in a different way.

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Rehabilitation is very important. I applaud the portions of the benefit section of the bill that expand first-party rehabilitation rights. My question is, why need that be done at the expense of pain and suffering? That is, if there are very strong reasons for greater rehabilitation, that should be done, but it should not mean that those individuals who have negligently caused more pain and suffering rather than less should not have to pay those costs.

We use pain and suffering in a variety of ways. Of course, the medical costs of rehabilitation are one thing, but there are many other aspects of a person's life that are destroyed when that person suffers personal injury that cannot be monetized, in a way, but which are made easier by having more rather than less resources. Furthermore, it is very important—and this is the point I have made in my direct testimony—to price high-risk drivers off the road, and pain and suffering does that.

The person who injured Jeremy or who hit Jeremy under this no-fault system would face only an increase in insurance premiums related to what injuries that person suffered, not Jeremy's injuries. But if this person is a risky driver and inflicts very substantial injury on someone else, then we want to price that person off the road or send a signal to people who drive in that particular manner that they ought to get off the

road or they are going to be priced off the road themselves.

It is a very important function of pain and suffering that goes beyond simply recompense, but is in addition to the recompense, that is made possible by greater financial security to a person such as Jeremy than he would have otherwise.

The Chair: Ms Oddie Munro.

Mrs LeBourdais: I have not quite finished.

The Chair: Okay. If you are going to take five minutes, you can answer to Ms Oddie Munro then. Go ahead.

Mrs LeBourdais: I will not go into my second question, but I will just close by saying I do not think we can price people off the road. We know for a fact that approximately 40 per cent of car accidents involve alcohol. Certainly I can speak first hand that many of those people who cause those initial accidents continue to cause them on repeated occasions, in spite of all of the warnings, in spite of the costs involved. It just does not happen. Those people who cause accidents as a result of drinking and driving are so impaired that that part does not come into their judgement call in choosing to drive again.

Dr Priest: Could I just respond? I am sorry, Ms Oddie Munro. If I could just respond for just a second, the important thing to recognize here is that it is not only the judgement of the driver as the driver is careening down the road that we are trying affect here; there are a large number of marginal drivers in the population.

I will give you a personal example. My son is 21 years old. He has a car. He is a very risky driver; he is a very poor driver. My wife and I have debated really the morality of allowing this fellow, who does careen around—it has been called the hormonal effect of 21-year-olds. Whatever it is, he is a very risky driver and he gets into a lot of—so far not very serious—accidents. He is marginal, economically, in terms of driving. If his insurance premium were to go up \$500, to roughly double what it is now, he could not afford to drive. There is no question about it. He would not afford it and we would not subsidize him for that amount.

Mrs LeBourdais: At the moment.

Dr Priest: At the moment, in the United States he is subsidized. He is in an assigned-risk pool and is subsidized for driving. If the state of Illinois, where he is in college, were to adopt no-fault, he would be subsidized even further. There would be no financial limitation on his driving whatsoever.

This is a person I think, though it is a little tough in the family situation, who society ought to price out of the market. It ought to price him off the roads. If it were to do that, the citizens of Illinois would be much safer. Under no-fault, he will drive and drive without limitation. He is right on the margin now, so if he gets into one accident, he is out, basically.

Mrs LeBourdais: Either way, he will buy his way into the system under either plan eventually.

Dr Priest: No, no. I assure you—well, we will not buy his way into the system, and he does not have the skills or the job opportunities to buy his way into the system.

But my own son aside, this is exactly the person we want to affect. It may be true that there are drunk drivers we cannot affect, that there are a number of accidents that cannot totally be eliminated but can be diminished through stricter supervision and stricter rating systems. But there are a number of individuals—and the 16- to 25-year-old males are a very good example—who are financially on the margin but who will not be on the margin when their high-risk driving is subsidized under an auto no-fault plan.

The Chair: In my understanding of it, the no-fault aspects apply to the benefits, not necessarily the rating system. I do not think the legislation is going to change how drivers are rated. Whether they are high-risk or a low-risk drivers, that is—

Dr Priest: It is not possible to do it, sir. One can change the rating factors in one way, but without having a fault system and without imposing those costs on the liability insurer, it is impossible to determine what the quantum of damage caused by the high-risk driver is. It is true that you can determine whether a person is in more or less accidents, but without the third-party carrier having to pay and compensate the victim, you do not know how much those damages are and how much they cause, so that quantum, which is a terrifically important part of rating variables in the United States in fault systems—and here in fault systems, that quantum is absent, and necessarily absent under a no-fault system.

You can make an estimate at it. I have talked to many officials in the government and I am not sure that the rating systems are designed to even make estimates of the quantum of damage, rather simply to look at frequency of accidents and frequency of moving violations and the like, but without that quantum, the full rating cannot be achieved. So as my son starts to cause more serious injuries, so far they are all rear-enders

and the like, but as he starts to injure people—hopefully he will not, but if he does—then his insurance premium is really going to jump. That cannot happen necessarily under a no-fault rating system.

The Chair: Did he buy you a Christmas present?

Dr Priest: Oh, he tries to do that. Yes.

The Chair: I see. It may be the last year that he does.

Dr Priest: He tries the Christmas presents as an inducement to have me subsidize his insurance.

Mr Runciman: We have had some varying testimony in respect to impact of no-fault on the rate structure in the US states. The indication we had yesterday from Professor Jack Carr of the University of Toronto, an economist, was that the rates in the no-fault states had been significantly higher than those states that had retained the tort liability system. I wonder if you can provide us with any more information on that.

Dr Priest: Yes. In the first instance, the adoption of no-fault leads to a reduction in rates. There is no doubt about that, because costs are simply shifted. They are shifted out of a system. But it has been the experience in the United States, first, that there has been a greater increase in rates after the adoption of no-fault in no-fault jurisdictions than in fault jurisdictions, and as rates go up higher, although it differs by jurisdiction, at some point they are higher than comparable rates in fault jurisdictions.

It is very hard in the US, of course, to try and control for all of the differences across jurisdictions in terms of driving, you see. It is very hard to compare Minnesota to Detroit and the like, but the best evidence we have is we know that rates increase faster and we know that for what appear to be comparable benefits, comparable driving populations, rates are higher in many no-fault jurisdictions than in fault jurisdictions. It is a complicated empirical matter to show it for every jurisdiction.

Mr Runciman: Is there any state in the US that has adopted no-fault that you are aware of that has given the kinds of tax breaks and the pulling it out of one pocket and putting it into another kind of a system that this government has adopted, which I have described as a shell game? I will give you an example. You are probably familiar with the tax breaks and the OHIP breaks, which equal about \$143 million, and the payments that are going to be shifted through the

Workers' Compensation Board and a host of other costs.

Dr Priest: Sure.

Mr Runciman: I know that simply talking to an insurance executive, for example, just looking at the \$143 million, he said that if that was factored in, the increase, instead of being eight per cent that the government is boasting about, would have been 15 per cent. That is without factoring in all of the other costs that are associated with this. So in reality we are probably looking at a 25 to 30 per cent increase, which the government is trying to pass off to the consumers of this province as an eight per cent increase.

I am wondering, you have said this kind of experience in the United States with no-fault costs rising at a rapid clip—have any of those jurisdictions instituted the kind of giveaways to the insurance industry that we are seeing here in Ontario under this legislation?

Dr Priest: No, sir. Of course, no jurisdictions in the United States have medical programs comparable to OHIP, so that avenue of shifting cost has not been available, but it has not even been attempted with regard to workers' compensation and with regard to other forms of medical benefits to which citizens have independent access. It has not been attempted in the United States, no.

Mr Runciman: That is pretty frightening, really. What we are looking at are significant increases here, even with the kinds of subsidization that this government is proposing under this legislation. That is pretty scary stuff, in my view.

I wanted to talk, if I have another minute or two, about one other element of the cost and that is the question of where the premium dollars go. I have the minister's statement, if I can get the correct quote. We have not seen any actuarial studies at this point to really substantiate the stand the government is taking, but he is talking about the inefficiency of the tort liability system.

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We have had expensive studies, one done by a Supreme Court justice, to say that there are no real efficiencies to be gained by going to no-fault, but the minister is talking here about an estimated 60 cents to 70 cents of every dollar ordered by the courts finding its way into the pockets of accident victims. That is thanks to the inefficiencies of the tort liability system. I wonder if you would just like to comment on that briefly.

Dr Priest: I have studied this issue quite extensively and I am quite convinced that the

claims of inefficiency of the fault system are greatly exaggerated. Again, it is a very small number of cases in which there are substantial legal expenditures of any type, two or three per cent of cases in the United States, and it is simply impossible to obtain great administrative saving from two or three per cent of the cases. All the rest, 97 per cent or 98 per cent of cases, are resolved by settlement out of court in very much the same manner as settlement under a no-fault system, so in terms of administrative costs, I am absolutely convinced that it is impossible to generate much saving in terms of administrative costs from shifting from a fault system to a no-fault system. That is why no-fault has to be expanded beyond no-fault to no pain and suffering.

The Chair: Thank you very much for your presentation.

Dr Priest: Thank you. I am very grateful for the opportunity to appear.

The Chair: From the Gore Mutual Group—the clerk is circulating the presentation—Serge LaPalme and John Lewington. I would just inform the presenters that they have half an hour. We have copies of your brief. If you could keep your remarks to about 15 minutes and allow us 15 minutes for some questions, comments and discussions, that would certainly aid the committee in its deliberations. We are yours for the next half-hour.

GORE MUTUAL INSURANCE CO

Mr LaPalme: It seems to me that, by destiny, a Canadian insurer should follow an American professor of some kind or other. I have come today prepared somewhat to make some reflections on the American system from some readings that I have done of late, which perhaps could share a slightly different perspective as to what no-fault insurance is all about.

Mr Velshi: You are not anti-American, are you?

Mr LaPalme: No, but I am all-Canadian, 100 per cent.

My name is Serge LaPalme and I am the president and chief executive officer of the Gore Mutual Insurance Group. I have with me our vice-president of actuarial sciences, underwriting and marketing, John Lewington, who will share with me in this presentation.

The Gore Mutual Insurance Co is an Ontario company founded in 1839. We celebrate our 150th year this year. It is a mutual insurance company and the oldest continuously operated

mutual insurance company in Canada. We have been selling automobile insurance since 1939, for 50 years, and many of our policyholders have continuously insured with us for over 25 years. Forty per cent of our policies in force are automobile insurance and 91 per cent are in the province of Ontario.

Operating in Ontario, Quebec, Alberta and British Columbia, our company is totally committed to the Canadian marketplace. We have 220 employees in Ontario and are represented by 425 brokers. We are a member of the Association of Canadian Insurers, which collectively provides insurance to 30 per cent of Ontario drivers.

As a mutual insurance company, we are deeply concerned, on behalf of our policyholders, about the escalating automobile claim costs in Ontario and the inevitable impact upon insurance premiums. We are also concerned about the provision of proper and equitable compensation for all accident victims and a timely delivery.

As a responsible insurer, it is incumbent upon us to ensure that we have adequate surplus and reserves to pay both known and unknown claims, to provide for future claim development and costs of settlement and to remain solvent.

By both federal and provincial regulation we are required to maintain an adequate solvency margin and to contain our volume of business to a level that is protected by an available surplus. For the last six years, automobile insurance in our company, even when we take into consideration investment income, has been unprofitable.

What does the consumer wish? What are his expectations? First and foremost, affordable insurance with reasonable premium stability; knowledge of his insurance, how it has been priced, so that he can compare and check for fairness; predictable benefits delivered quickly; equitable treatment of accident victims; bad drivers should pay more than good drivers; serious offenders should be punished and, above all, improved safety of both highways and vehicles. We believe that the promulgation of Bill 69 and Bill 70 addresses these issues and we believe that in a large measure Bill 68 will.

I recall the words of Dr David Slater on the Ontario Task Force on Insurance, where he stated, "The government of Ontario should consider substantially limiting resort to tort litigation with respect to personal injury compensation from automobile accidents by way of a threshold."

The questions we must ask ourselves are: Is the system fair? What actions are required to make

the systems fair? What ought to be the objective of our government to make the system fairer?

When we talk of fairness, we talk of fairness to the consumer by way of availability of products and affordability of products; fairness to the injured persons, that all should be compensated regardless of fault; fairness to witnesses, for indeed when one takes three to six years to be heard in a court of law, memory does lapse; fairness to judicial process, lawyers and judges who have to hear cases six, seven years, 10 years later; fairness to society in the knowledge that tort is not a deterrent to traffic accidents. There are absolutely no empirical findings that tort is a deterrent to traffic accidents. In my view, we are dealing with behaviour, with lack of discipline, and the emphasis must be on teaching defensive driving skills such as espoused by the Canada Safety Council, the Ontario Safety League and many others.

We must remember that 30 per cent of at-fault victims are not compensated for the injuries that they suffer in traffic accidents, and in our view, that is not fair.

Who are these persons who are injured in traffic accidents? They are persons injured from another person's negligence, persons injured from their carelessness and persons injured from no one's fault, just simply road conditions. I suggest that society may be better served by spreading the compensation among the many who are injured resulting from traffic accidents, regardless of fault, rather than limiting compensation to those found to be not at fault.

Our present system, we believe, is unfair in that justice, as applied, is uneven and unpredictable. It is unfair that, as stated by Justice Coulter Osborne, I think, "Justice delayed is justice denied." When I did attend the Coulter Osborne hearings I was impressed not by the eloquence of attorneys or professionals who came forward but by those who found themselves in wheelchairs rolling themselves down the aisle to inform the Chief Justice that it would take anywhere from three to 10 years to receive any form of compensation, and by those who came forward as quadriplegics who would say, "Perhaps because I was at fault, I am today a recipient of welfare." That is no just society.

It is unfair because of the existing costs of determining losses and issues, and again we must recall the words of Coulter Osborne when he said that "lawyers are increasingly inventive in their development of evidence to establish economic loss, which in turn has increased economic loss damage assessment."

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What we are doing by going to a no-fault system is trading a civil right for a human right, that all should be compensated, regardless of fault. We are moving towards a more wholesome, human approach to traffic accidents when one recognizes that the automobile today is a utility and not a luxury item. We are moving from rehabilitation versus a lottery. We are moving to indemnity rather than enrichment, and we are moving from negligence to compassion and prudence.

We urge the task force to regard the maintenance of the status quo as no longer in the best interests of the Ontario insurance consumers, and it is our view that there are lessons to be learned from the American experience.

The cost of North American auto accidents continues to be a major public concern, particularly as the cost is reflected in the premiums.

In analysing the advantages and disadvantages of the threshold no-fault mechanism, Ontario can benefit from the American experience.

As of 1987, 14 states had laws that restrict the right to sue for minor auto injury claims and provide auto injury victims with substitute personal injury protection benefits regardless of fault. Eleven states had laws that require auto insurers to offer personal injury protection benefits but do not restrict the right to sue, and 26 states remain under the traditional tort liability system. In a tort environment, injury victims are expected to collect payments from the at-fault driver and must be prepared to prove negligence.

A recent study which I recommend to this body, conducted by the All-Industry Research Advisory Council—published in March 1989, it is the most recent published article on no-fault—entitled *Compensation for Automobile Injuries in the United States*, has provided unique data pertaining to no-fault insurance. The report was based on 46,694 paid injury claims provided by 34 participating insurers.

The results suggest that rising auto injury costs correspond to increases in economic losses and a significant increase in involvement of attorneys in claims settlements. Is it only a coincidence that the states with high attorney involvement tend to have high injury costs and states with low attorney involvement tend to have low injury costs?

In Ontario, I am reminded, we have in excess of 22,000 lawyers as compared to approximately 4,000 in Japan. I am also reminded that in the United States only 45 per cent of the gross damages ever reach the victims, suggesting that

55 per cent goes to other sources, not necessarily to the victim.

The study reinforces our belief that Ontario would benefit from a threshold system. Attorneys' fees and other legal expenses absorb about 31 per cent of the gross settlement. We know that in Canada, of the \$1.8 billion paid in 1988, some \$500 million went for legal expenses.

States with mandated no-fault benefits tend to provide payments to a larger percentage of persons injured in auto accidents than states with traditional tort laws. The study concludes that no-fault tends to be more cost effective and a better use of society's resources.

The Ontario situation, in our opinion, is similar to that of the United States. Again quoting Coulter Osborne:

"Delay is a problem in the payment of third party bodily injury claims. The root cause of delay, aside from congested court lists, is the lump sum payment compensation system which requires bodily injuries and disabilities to be stabilized before settlement or trial can realistically be considered."

A study by Professor Carl Barr of Brock University, which was recently released, revealed that Ontario has virtually the slowest court system in North America. It takes us virtually years and years before we can get a case on the roll and even to a pre-trial.

The US experience with no-fault, I think is quite clear: 53 per cent of the US population resides in states having automobile no-fault benefits; 25 states and the District of Columbia have some form of no-fault insurance. No two no-fault plans are exactly alike—and I dare suggest that no one is perfect—but common to all no-fault plans, auto victims receive benefits from their own insurer.

No-fault benefits generally provide reimbursements for medical and rehabilitation expenses, wage-loss replacement services and funeral expenses. In 14 states, no-fault plans have been enacted in which suits for general damages cannot be initiated unless economic loss sustained exceeds a specified amount.

It is our view that no-fault auto insurance would reduce, or at least contain, automobile premiums and would best serve the Ontario consumer.

John will be dealing with the product.

Mr Lewington: What are the arguments in favour of this change? Does the bill address consumer expectations? Although Bill 68 is not what we would have recommended, we are of the opinion that it is a significant improvement over

the existing system and responds favourably to the majority of consumer expectations.

What about the costs, the premium problem? Gore Mutual's claims costs for bodily injury reparations are exceeding our increased premiums. Our example is quite typical of the combined automobile insurance industry in this province. We are concerned that bodily injury claims costs continue to escalate in the tort environment. No claims containment is as yet on the horizon and our policyholders have shown great resistance to increased premiums as the only solution. In order to achieve a meaningful change in premium requirement, it is necessary to break the cycle of tort bodily injury awards and settlements as the main engine of claims costs.

What are the alternatives? In order of potential for cost containment and therefore price control, these alternatives rank: pure no-fault, threshold no-fault or modified tort.

The auto insurance industry has suggested that pure no-fault has the greatest potential for cost containment, claims expense saving and premium control. The total loss of access to tort seems to be the Achilles heel for this product, at least in Ontario. We have been told Ontario motorists are not ready for pure no-fault.

The modifications to the current auto repair system outlined by Mr Justice Osborne and reviewed by the Ontario Automobile Insurance Board were found to be wanting. They found no cost containment in the auto insurance product and difficult-to-quantify savings from tort reform. This option was rejected.

The choice narrows down to the compromise product, threshold no-fault. This product offers considerable cost containment by limiting access to tort to defined bodily injuries. Also, it offers a more generous schedule of benefits without regard to fault. These improvements in coverage could be delivered at a premium level below the current tort product if the tort product was currently at adequate premiums.

In spite of the current inadequate premium levels, we believe the Ontario motorist protection plan threshold no-fault product can be delivered to the consumer at an overall affordable premium increase. However, the longer implementation is delayed, the greater the need for either interim rate relief or higher initial premiums.

It must also be understood there is going to be a significant impact on expenses and repair costs when the goods and services tax is implemented. Allowance for this new expense will be required.

What about delivery? Delivery will be improved because benefits for injuries below the threshold are fully prescribed. Accident victims will know what they are entitled to receive as compensation. They are the same for everyone and not subject to the judicial lottery system. They can be provided much more quickly.

It is our contention the time and effort saved from litigation will itself be rechannelled into the provision of faster claim payments and greater assistance to claimants. Faster payment will also be provided to those entitled to sue, since they will also be entitled to the no-fault benefits while their case is before the courts.

Gore is looking forward to the challenge of the OMPP. For the first time in Canada, insurance buyers will be able to choose their care giver in the event of a serious auto injury. This first-party environment for most bodily injuries and all physical damage will be beneficial and cost-effective for all parties. We receive a lot of compliments in our claims department for timely and equitable treatment of first-party losses. We are quite looking forward to taking care of our customers.

1050

Equity: Bill 68 creates a more equitable distribution of benefits. Currently, some 30 per cent of accident victims are not entitled to receive adequate rehabilitation and long-term care. Why not? Because under the tort system they are guilty parties, and therefore cannot benefit from their wrong.

The present weekly loss of income benefit is woefully inadequate. The Honourable Mr Justice Coulter Osborne recommended a weekly benefit of \$450 per week. Bill 68 implements that recommendation. When compared with the 67 per cent of income allowed under most other benefit plans, the 80 per cent of gross weekly income provided by this bill appears quite generous. It is equivalent to a maximum of \$23,400 per annum and is available as a top-up to existing salary replacement or from first dollar.

How does access to benefits compare, tort versus OMPP? It is important to remember unfunded liabilities are worthless to those who receive a court settlement. Many motorists have inadequate third-party limits with which to respond. In fact, many policyholders carry only \$500,000 limits or less. On this basis, a \$1-million award is 50 per cent unfunded.

In the proposed product, however, benefit levels are guaranteed: rehabilitation and medical, \$1.5 million, including many of the private costs over and above OHIP's basic benefits, prosthe-

sis, housing modification, transportation of victim and relatives, etc; future care, \$1,500 monthly, up to \$500,000 in total; weekly indemnity to \$450 weekly, all available immediately.

The tort coverage is only called upon to fund the excess award over the guaranteed benefits from the claimant's policy. Surely this is better economic use of available limits.

What about the adequacy of protection? I suggest the benefits that are available are a threefold safety net. First of all, the first-party basis: accident benefits with a substantial increase from present levels, payable regardless if a tort action is taken and speedy delivery guaranteed. If a tort action is commenced, the third-party limits are also available. They are excess over the other available benefits, including the first party. Let us remember that 66 per cent of drivers carry \$1 million worth of third-party coverage.

The third part of the safety net is the underinsured motorist protection, which is also available if the third-party limits are still not enough. That is usually available to the limits of one's own policy, and brokers have been very careful to sell that to as many policyholders as they can.

What about the first-party concept in OMPP, also known as direct indemnity? The move to direct indemnity for physical damage losses is a further example of claims cost containment in the OMPP. Policyholders will deal only with their own insurer for vehicle physical damage losses. The savings to the consumer are to be found in the claim adjustment process. There is no third-party insurer to deal with and only one claim investigation per accident instead of investigation by both parties.

The direct indemnity concept offers the insurer the opportunity to exercise improved control over the severity of automobile physical damage losses. Control of physical damage claims is as important as control of bodily injury claims because some 60 per cent of claims dollars are expended here and the costs are rising.

During the last several years, vehicles have been made lighter and consequently are more easily damaged. The chassis has become the unit body. The number of parts has increased. More complexity is built into the vehicle. Cost containment will only be achieved in auto repairs through increased access to competitively priced replacement parts, increased competition among auto repair facilities and improvement in the design and safety features of automobiles. The

co-operation of car manufacturers and regulators will be paramount in achieving this.

The Chair: Could I ask you to wrap up in about a minute or a minute and a half?

Mr Lewington: I have just come to my summary.

The Chair: Great, because that will allow us about four minutes each for questions.

Mr Lewington: In summary, the Gore is of the opinion there is sufficient evidence to demonstrate that a threshold no-fault is preferable to the existing tort system. In brief, Bill 68 addresses many of the consumer concerns with the present tort system by providing adequate compensation, improved economic efficiency and better control over costs.

In particular, consumers' expectations will be met by the proposed legislation as follows: Insurance will be more affordable than a continuation of the tort system. Rates and premiums will be approved by the insurance commission. Disclosure of policy rating criteria is a requirement of all insurers. Benefits will be almost immediate, with penalties for unreasonable delay. Benefits are available to all victims regardless of fault. High-risk drivers will be recognized in the policy rating criteria. The severely injured will have continued access to tort settlement.

In researching this brief, it was interesting to reread the comments of the Ontario Task Force on Insurance, Mr Justice Coulter Osborne's report and the decisions of the Ontario Automobile Insurance Board. Many of their reform requirements have been met by the proposed legislation. Gore Mutual supports the government's initiatives encompassed in Bill 68 and also supports Bills 69 and 70.

Ms Oddie Munro: Sitting on the committee, we have had an opportunity to listen to a number of presenters. I think that starting to slip in here is some evidence of fearmongering, and that is in the case of accident frequency. I think a lot of people are saying that indeed we are likely to see an increase in accident frequency because many drivers will become less responsible. Bill 68 was fashioned with a number of other protective measures, interministerial measures, by the Attorney General (Mr Scott) and the Solicitor General (Mr Offer).

Notwithstanding the American experience, all the empiricism, all the academic thinking and the "new US learning academy" and all the new stuff that is coming out of there, I wonder if you would care to comment on whether or not, given your

experience, you feel this bill will result in increased accident frequency because of, I guess, a lessened responsibility and diligence on the part of high-risk drivers.

Mr LaPalme: I will gladly answer that question. It is my understanding and my research, having been close to the no-fault issue for years now, that tort in and of itself is not a deterrent to frequency or the number of traffic accidents per 100. Quite to the contrary, I read many an article in the province of Quebec, when I resided in Quebec where no-fault was introduced, alleging that no-fault in fact increased the number of accidents per 100. I stand to tell you here today that, in my opinion, that was not the case at all. Economic cycles have far more to do with it; affluence, say, over cycles, has far more to do with traffic injuries and traffic accidents and frequencies than does no-fault.

I do not believe that anyone leaves home at night with the intent of wrapping his or her body around a tree. I do not think people think that way. I believe, having been involved in claims for many years, that most accidents are for the moment, a split-second error in judgement, more than likely. Many cases have been made about impaired driving, but here again, while I recognize that there are hundreds of thousands of cases of impaired driving in Ontario, even if these individuals should be penalized, should their families and their children be penalized? Let's penalize the offender, but let's not penalize the family. This is where no-fault becomes very compassionate.

The answer to the question is this: There are no empirical findings in support of the fact that no-fault insurance increases automobile accident frequencies, nowhere at all.

Mr Kormos: I read your brief and I note that you indicate losses for 1987 and 1988. We have learned from the OAIB that when the insurance company says, "We lost money," what it really means is, "We made money." That is what Kruger tells us. Yet in those same years that you claim you lost money, you gave over \$3,000 to the Liberal Party by way of contributions in 1987 and then you gave more in 1988. Ralph Nader told us that moaning and groaning was an occupational trait of the insurance industry. In that regard, you have got a lot in common with whores.

Mr LaPalme: Mr Kormos, do you have a question for me?

Mr Kormos: Listen for a minute. I tell you that in your brief—

The Chair: Mr Kormos, just a second.

Mr Kormos: He can respond.

The Chair: Yes, he can respond, but I just remind you that we are an extension of the House. The witnesses are before us. I ask you, as much as possible, to refrain from unparliamentary language, either to the committee members or to the presenters.

Mr Kormos: Biblical whores, Mr Chairman.

1100

Mr LaPalme: Mr Kormos, I am not here for political advantages, nor am I here for rhetoric. Do you have a question, sir, based on the facts that are before you?

Mr Kormos: Yes, I have. You are not prepared to listen because I am going to tell you how sleazy and slimy—

Mr LaPalme: What is your question, sir?

Mr Kormos: —you guys still are. Listen to me.

Mr LaPalme: What is your question, sir?

Mr Kormos: You guys have not become any less sleazy or any less slimy when you crawled in—

The Chair: Order. Hello—remember me again?

Mr Kormos: —underneath the God-damned door this morning to come here. You have the audacity—

The Chair: Order, order. Mr Kormos, order. Can we just tone it down for a bit? Mr Farnan, will you pick up two minutes and then we will come back to Mr Kormos.

Mr Kormos: No. Do not try to censor me, Mr Chairman, because if—

The Chair: I am not.

Mr Kormos: It sounds like it to me.

The Chair: I am not attempting to censor you. All I am telling you is that the witness has the ability to respond in any way he wants after you have placed your comments or questions.

Mr Kormos: That is right, and I will finish my comments now.

The Chair: Okay.

Mr Kormos: This slime comes in here with a brief that purports to quote from Osborne, that upholds its position. What they have done is isolate and take words out of context. They have not got the gonads or the guts to admit that Osborne categorically rejected threshold no-fault, categorically rejected no-fault.

These guys lie like rugs. They have done it for years; they are doing it now. There is nothing about their demeanour that is going to change the reality of their role, which is to dig deep into the pockets of drivers and gouge them at every turn. The only interest they have in this legislation is whether it is going to generate profits for them that they have never dared dream of before. They have been bugging for this for years. It has nothing to do with fairness; it has to do with screwing the drivers of Ontario. They know it; we cannot expect them to say it. Their motive is profit, profit and profit alone at the expense of victims of automobile accidents. They are going to victimize them a second time.

The Chair: Time has expired, Mr Kormos, and I would just remind everyone—

Interjection.

The Chair: Just a second, Mr Kormos. I am sorry; your time has expired. Mr Farnan, I will come to you in a minute.

I would remind everyone that as chairman of the committee I have the responsibility to try to conduct the hearings in as parliamentary a fashion as possible. The only recourse I as chairman have to see that that happens, in terms of what I would deem to be either unparliamentary language or abusive attitudes towards either the witnesses or the committee members, is not to recognize individuals when they request to speak.

Unless I receive a guarantee from Mr Kormos that he will restrain his abusive attitude or language towards the witnesses or other committee members, I will not recognize him. Mr Farnan.

Mr Kormos: They have been abusing the drivers of Ontario for years.

The Chair: Mr Farnan.

Mr Kormos: Do not talk to be me about abuse and do not try to censor me. This whole thing is a scam and you are betraying that now. You are sinful, pathetic. You are pathetic and this committee is pathetic trying to censor opposition. That is great.

The Chair: Mr Farnan, two minutes.

Mr Farnan: Thank you, Mr Chairman.

The Chair: And I would place the same restriction on any committee member.

Mr Farnan: As the member for Cambridge, I would like to say that Gore Mutual is a much respected corporate citizen of the Cambridge community and Gore Mutual's involvement and support of community life and projects is very

much appreciated by the citizens of Cambridge and, I am sure, of the other communities in which you are present.

I do have a question. In your presentation, on page 3, you talk about consumer expectations and you lay out a variety of these expectations. The one thing that is missing from this list of expectations is what we call adequate benefits. In talking to some of the residents of Cambridge, a question has been posed to me and I would like you to answer it.

The present system does not provide adequate benefits. Indeed, what it does is give the insurance companies the opportunity to say, "If you do want adequate benefits, you will have to buy additional insurance and therefore we're not going to just have an increase of eight per cent or nine per cent; but if you want adequate benefits and you're earning a half decent wage, you can be looking at 15 and 16 per cent." If that is the case, then of course the increases since 1987 would be in the 32 per cent range.

How do we answer the man or woman in Cambridge who is told, "You're going to have to pay way beyond the eight per cent for adequate benefits"?

Mr Lewington: I think in my presentation I attempted to explain that with the combined availability of the first-party benefits, the access to tort and the return to the underinsured motorist endorsement in this program there are far greater benefits than there have ever been available.

Mr Farnan: I want to say that I appreciate your presence here, as I appreciate the presence of every insurance company or anyone who appears before this committee, whether in favour of the legislation or opposed to the legislation. I believe the process demands that as a committee all of us listen to the arguments put forward and weigh our decisions, having heard all the evidence.

The Chair: From the Ontario Association of Children's Mental Health Centres, the executive director, Ms Weinstock.

Mr Velshi: While they are settling down, I wonder if I could make a request here. I think in view of what has been happening, perhaps we could discuss this matter. Everybody who comes here who says something good about Bill 68 gets insulted and bullied and I do not think that is fair. We are not doing it to anybody who is opposing Bill 68, because we think everybody has a fair right to say what he feels about it. I think it is important that we stop badgering witnesses and stop insulting them.

The Chair: We can discuss a process question after the 11:30 presentation.

Mr Kormos: Get out of here. Grow up.

Mr Velshi: Be quiet. I am talking. I have the floor right now. You behave yourself.

Ms Oddie Munro: How dare you push people around like that?

Mr Velshi: This is offensive behaviour, it is slimy behaviour, Mr Chairman.

The Chair: I will just take it as a procedural question and deal with it at 12 o'clock.

Interjections.

Mr Velshi: Maybe we should go to the Speaker of the House to make a decision on this.

Ms Oddie Munro: He has not got a right to talk like this.

Mr Velshi: It would not be allowed in the House and it should not be allowed here. The Speaker needs to be called in on this.

The Chair: Ms Weinstock.

Mr Kormos: I know what has happened. You want to censor opposition.

The Chair: Order. Ms Weinstock—and I see there is a gentleman with you—for the next half hour we are yours; 15 minutes, if you could, for your presentation, it has been distributed by the clerk, and 15 minutes for questions, comments and discussion. Please proceed.

ONTARIO ASSOCIATION OF CHILDREN'S MENTAL HEALTH CENTRES

Ms Weinstock: I am Sheila Weinstock. I am the executive director of the Ontario Association of Children's Mental Health Centres, and with me is Dan Ferguson, who is a lawyer for our association.

We represent 85 centres that provide treatment to children with emotional and mental problems across the province. The association is committed to the development and maintenance of a range of high-quality mental health services for children in Ontario. The centres are located all across the province, from Kenora in the west, from Windsor and Welland to the south, and Kapuskasing to the north.

The centres have about 5,000 multidisciplinary professional staff and in 1988-89 they served almost 50,000 children and families. The association itself was organized in 1972. By and large, its members are voluntary associations governed by voluntary boards of directors. I have appended more information about the association and some of our newsletters as well.

We in the association are not insurance specialists but we are concerned about Bill 68 as it is drafted, because of its potential impact on children and on individuals with mental and emotional problems. Bill 68 and its draft regulations must be considered together, because the philosophy of the scheme and the economic assumptions and goals are only fully apparent when both are taken into account. It is our perception that the overall scheme discriminates against persons with mental disability and we find this shocking in 1990.

It contravenes universal public values as well as the philosophy underlying the Ontario Human Rights Code and the law enshrined in section 15 of the Charter of Rights and Freedoms. The scheme also discriminates against children under the age of 16. The removal of the right of adults to recover all income loss and economic loss from a negligent driver will directly and indirectly harm the economic, emotional and social wellbeing of children. The greatest hardship will fall on children from low-income families and children with pre-existing emotional problems.

1110

To propose such a law contravenes the policies of this government in other fields. It contravenes the proposed United Nations Convention on the Rights of the Child. It is unbelievable to us that in this day and age we would consider any social policy which will lower the standard of living of children or take away rights from children, our nation's most precious resource.

Children under 16 do not cause car accidents. There is no social tradeoff for them in this scheme; they only lose. They do not have any way of protecting themselves if their parents' incomes are reduced. They have no way of protecting themselves if their own future income is reduced or delayed. The poorest children will suffer most.

We attempt to help our clients achieve a sense of their self-worth and dignity. This bill could have the opposite effect, in that it would reduce the sense of dignity and sense of self-worth of individuals by implying that they are not worthy of compensation.

With respect to the specific provisions of Bill 68, we oppose section 231a for these reasons:

First, economic loss: It will remove the present rights of 90 to 95 per cent of injured persons to recover all economic loss resulting from the negligence of a driver. If the loss is suffered by a parent, this will directly impact on the economic, emotional and social wellbeing of the child who depends on that income for food, shelter,

clothing and social amenities. If the injured person is a child, he or she will be forced to start life with diminished economic prospects because of someone else's negligence. Children cannot purchase alternative insurance to protect themselves. The children who suffer most will be those who are members of low-income families who will be unlikely to purchase additional insurance.

Second, permanent serious disfigurement: It is unacceptable to us to suggest that a child who is temporarily seriously disfigured or permanently but not seriously disfigured should receive no compensation. No one will suffer more emotional upset, change of attitude, loss of confidence or social embarrassment than a child with a disfigured body.

Third, permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature: Some of the same comments apply. A child may suffer more than an adult from any physical injury, however long-lasting or however serious. But the most alarming notion is the suggestion that severe physical injury warrants compensation, but severe mental injury does not.

Ontario's Human Rights Code recognizes that every person has certain rights without discrimination because of handicap. The Canadian Charter of Rights and Freedoms states, in section 15, "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination...based on...mental or physical disability."

The inclusion of this provision in the bill indicates a serious lack of judgement and a lack of concern for individuals with mental health problems.

With respect to the draft regulations, we oppose the limit on weekly benefits for employed persons in section 11. If a parent cannot recover all of her or his lost disposable income, the children in the family will suffer. The children in poor families will suffer most. Low-income families will be the least likely to have employment plans or private insurance which will make up the shortfall. The children in those families will be the most vulnerable victims of a reduced family income.

How much a scheme gives to a negligent driver or to someone who cannot prove negligence is a matter of economics and tradeoffs. To take away the rights of innocent victims who can under existing law recover their total income is socially regressive.

Section 12: This section provides that unemployed persons will not receive a weekly benefit to replace lost income, but will receive \$185 a week for the period of any total disability. However, individuals under age 16 are excluded. This is unacceptable. Do children suffer less pain than adults? Is disability less disruptive to their lives? If there were a distinction between age groups, we would think most people would want to give young children more, not less, than adults. It is strange to us that the government would propose that of all the disabled persons, only children should receive nothing.

Consider a few examples of the outcome of this law.

The threshold: A six-year-old girl is struck by a car and her face is injured; she has several operations, painful operations; she is put in hospital all alone for weeks at a time. Between operations she goes to school, where the teachers and other children stare at her disfigured face. Maybe after several years the miracles of the plastic surgeon make her face look normal, but maybe her attitude will never be the same.

Should this child receive no compensation because her disfigurement was not permanent and serious? Suppose the child develops a neurosis which is serious and affects not only her personality and her social life, but also limits her chance to marry and work for a living. Should she receive no compensation for her pain and suffering simply because her injury is not physical in nature? If she were permanently disabled, she would be condemned to live on \$185 a month, or \$9,620 a year, for the rest of her life, with no increase for inflation.

Suppose a 10-year-old boy is struck on his way to school by a careless driver and suppose his injury is not permanent but he loses his year at school and consequently one year of future income. He gets nothing for this loss. His twin brother, who was not hurt, would have about a \$25,000 head start in life because he would earn a salary for a whole year before the victim finished school.

Suppose the 10-year-old is one of the 50,000 children and families who received help last year from a children's mental health centre and his previous emotional problem becomes dramatically worse because of the disruption to his life after the car accident. He gets nothing.

Children's rights to food, shelter, clothing and simple amenities: Many families have difficulties making ends meet. Suppose a six-year-old's mother is struck on a crosswalk while coming home from the grocery store. The mother is

hospitalized and cannot work. She is a single parent and her income never did quite pay all the bills. She receives nothing for her first week off work and the youngster and her mother will receive 80 per cent of the family income for the rest of the period of her disability. How will they pay their rent? Will they go to a food bank?

Suppose, after a period of total disability, the mother returns to work but misses occasional days, and perhaps occasional weeks, off work over the next year because of recurring symptoms. She gets no compensation for those days. Who will ensure the child does not suffer? The mother has no plan at work which will make up the shortfall. She could not possibly afford private disability insurance.

What is the social tradeoff here? The legislation gives increased benefits to the negligent driver, but it takes away the right of the mother and child to the basic necessities of life. The mother did not take a risk or trade a benefit for the opportunity to have lower car insurance premiums; she does not even own a car. And the child? What benefits is she trading?

Do we want a law in this province which leaves the child's pain uncompensated, a modestly disfigured child uncompensated, a mentally disabled child uncompensated? Do we want a law which does not even maintain the modest income of this mother and her child? Are we doing this so other people can save some money on their car insurance premiums? There must be a better way.

Mrs LeBourdais: Ms Weinstock, this is a very poignant brief and one that tugs at the heartstrings, but I think to some degree it begins to paint us into a box that is unfair, that those of us who support a different system are not just as feeling and just as concerned about the unfortunate plight of some of the examples of the children in this case.

You have said that in many cases children of disadvantaged parents would be even more severely disadvantaged. But I think in the cases you have put forward you are assuming that they will have access to the very best lawyers and access to the wherewithal to work the system. Those with perhaps more education and more money can work the system better. We know that in cases where the situations are very similar the outcomes and judgements are often very different.

I guess the choice is between a system that is guaranteed, that would allow early initiation of rehabilitation, that would allow income replacement if it is an adult with an income, as opposed

to a child. I think in many cases those children would benefit.

To bring forward the sad situation of these children who are physically impaired in either case, in either system, and whether it is the result of an unfortunate fact of birth as opposed to an accident, regrettably those children perhaps will be taunted. I am optimistic enough to think that these days the majority of the population are changing their attitudes to the disabled. We see a young man this week such as Jeremy Rempel who has overcome that disability. The relationship between him and his father was something we as parents would all be delighted to share with our children.

1120

I think you have painted a very bleak picture. I would like you to comment. In many cases for the disadvantaged, who I think are going to benefit the most from this, those under the \$30,000 line, do you not think that getting things going fast, getting that family back to being stabilized and looked after well has some merit and is not just for pie-in-the-sky settlements that will go to some, but usually not to those who are disadvantaged?

Mr Ferguson: Perhaps I can reply to that. You have raised a number of points, but let me deal with only one. It is our position that there is nothing about the plan that requires, for instance, the exclusion of children under 16 from persons who receive \$185 a week when they are disabled. Your plan says that if you are not working but are a senior citizen, or are not working and are over 16, you get \$185 a week compensation. We do not understand why a child should not be included.

Mrs LeBourdais: Would you care to take that further, to comment on the system as I have outlined it, about providing the benefits it would?

Mr Ferguson: You referred mostly to pain and suffering. Is that the point?

Mrs LeBourdais: Yes.

Mr Ferguson: I think the earlier speakers have sort of covered the gamut. The problem with the plan, as we perceive it, is that you exclude and remove rights for children who we would have thought would be the ones for whom you would want to retain and improve rights. If anything, if you are going to remove rights, it would be our position that you should favour retaining those of children.

Mr Kormos: You illustrate a couple of examples of the impact of this legislation in your brief. Some similar examples have been put

before the Legislature during question period, at various public forums and at this committee, and the government has responded by trying to ridicule those who would offer those examples.

One of your illustrations is when you talk about a 10-, 11- or 12-year-old kid on his way home from school who is knocked down by a drunk driver in a Mercedes, Porsche or Jaguar. One of the other aspects is that there is an effort to make an impression that it is only the most trivial of injuries that are going to be excluded from compensation. There is an impression out there about the malingerer and, let's say, the fraudulent claimant, the old slip-and-fall expert who dashes out in front of a moving vehicle so that he or she can make a nuisance claim, I think lawyers and insurers call it.

But that is not all that is included, and you illustrate that when you talk about the 10-, 11-, or 12-year-old kid walking home from school, walking on the walk sign, doing nothing illegal, nothing improper, doing everything he or she should be doing, and a drunk driver in a Mercedes breaks both his legs or breaks his back, puts a kid in traction. I think we all understand that kids are far less able to rationalize the pain associated with that. They are far less able to do it when they are told: "Don't worry. It will be better four months or a year down the road." they cannot internalize that as readily as most adults can. He is laid out in traction for four months, loses one year of school—you have illustrated that in your example—loses a second year of school when he or she is left at home for that additional year, and cannot do all of those things for those two years, cannot play hockey, soccer, jungle gym, all those sorts of things.

To suggest that the broken back, the four or five months of traction and a year of home recovery is a trivial injury is just plain stupid. To suggest that this example is out of line is similarly stupid, because you people and any other number of people can come up with examples that occur on an almost daily basis.

That kid receives not a cent, not a penny, for pain and suffering, and surely to God there is pain and suffering there. He receives nothing for what you talked about, the lost opportunity, for two years. You used the example of one year but in the case of a broken back where you lose two school years, you have two years delayed entry into the workforce.

It is incredible. There is not a penny of compensation for that, yet that same drunk driver in the Mercedes Benz, who after striking the kid hit a pole and banged his head against the steering

wheel, would receive income replacement for as long as his injuries required him to stay home from work. He, of course, would know enough to delay his conviction, because the Liberals have promised that he is going to get the money until he is convicted. He would know enough, and it is not hard in our courts, to delay his conviction until he had recovered.

What you are talking about is that we know money can never replace lost opportunities. We know money can never replace pain and suffering, or compensate totally or adequately, but we are talking about a more civilized version than the old *lex talionis*, the old pure retribution, the old eye for an eye. We are talking about doing whatever we can to compensate that person.

People are walking around here trying to impress other people with the fact that pain and suffering, loss of enjoyment of life, the loss of an opportunity for a kid to play hockey in his little hockey league, is not an injury, is not damages, is not a loss. I think you and I are on line when we agree that it is a very significant loss. You folks, in terms of the work you do, feel it more sensitively than anybody. It is incredible that people would try to belittle these illustrations because they are dead on; they are real life, not fantasy. Thanks for coming today.

Mr Ferguson: I know it is untoward, but perhaps I can leave it as a rhetorical question if no one wishes to respond. The previous speaker talked about the plan in his view being one that moves us towards a more compassionate scheme. We are often asked by the member agencies and by many people we have spoken to why there is an elimination of benefits for persons under 16, and why people with mental problems are not treated the same as those with physical problems. Is there some explanation of the government's philosophy that we can take back to those people to explain what the reasons are?

The Chair: I am going to take it as a rhetorical question, because those are the issues we are struggling with as a committee and not everyone would share the same viewpoint you have. I appreciate your presentation. Thank you very much.

Ms Weinstock: Thank you for the opportunity to come.

The Chair: From the Employers' Council on Workers' Compensation I have three individuals, Ms Andrews, Mr Yarrow and Mr Frame. For the next half hour the committee's time is yours. The clerk has circulated your presentation. If you could take about 15 minutes

to go through it and allow 15 minutes for some questions, comments and discussions, we would appreciate it. Thank you very much for coming today.

EMPLOYERS' COUNCIL ON WORKERS' COMPENSATION

Mr Yarrow: Thank you very much for this opportunity. I would like to introduce, to my left, Judith Andrew, who is becoming a familiar face, I suppose, even around this table. She was here yesterday for the Canadian Federation of Independent Business and she is here with us of the ECWC today. David Frame, to her left, is with the construction association and I am chairman of the ECWC.

We are going to depart a little from the normal kind of presentation you have been receiving. While we each have our own philosophical views on the pluses or minuses of no-fault insurance, that is not what we are here about today; one of the chief reasons today will have to do with the transference of costs, and we are referring to the Workers' Compensation Board.

I do not think that even Mr Campeau, with all his financial woes, has been able to get into as much of a mess as the Workers' Compensation Board has over the last few years, and we do not want to see no-fault insurance, if it comes into place, to follow the same route. More than that, in a more practical vein we do not wish to see the business people of this province paying a disproportionate amount of the costs through the Workers' Compensation Board.

1130

The Employers' Council on Workers' Compensation is a voluntary, nonprofit coalition of 20 trade associations plus corporate members and technical experts, dedicated to making sure the workers' compensation system in Ontario works more effectively and efficiently and is financially viable. The list of our membership is at the back. Our broad membership numbers in excess of 50,000 employers, large and small, employing over one million employees and operating in nearly every segment of industry covered under schedule 1 of the Workers' Compensation Act.

We are also beginning to attract schedule 2 representation as more public sector and large transportation companies become concerned about the impact of self-insuring for WCB on their operations. This council addresses the broad spectrum of workers' compensation policy issues. Consequently, we have a keen interest in Bill 68, An Act to amend certain Acts respecting Insurance.

Section 231a in Bill 68 delimits an auto injury victim's right to sue except in cases of fatalities or "permanent serious disfigurement" or "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature." Section 231b provides that in the event a suit proceeds, damages awarded to a successful victim are reduced by amounts paid or payable from other sources, including the Workers' Compensation Board.

In short, Bill 68 restricts legal suits by workers injured in motor vehicle accidents currently available under section 8 of the Workers' Compensation Act. It also takes away subrogated rights of the board to pursue such claims. Workers injured in automobile accidents will no longer be able to take court action, nor will the WCB be able to recover its expenses, let alone surplus amounts that previously flowed to the injured worker.

Ms Andrew: Workers' compensation—no-fault insurance in action: Employers would generally agree that the WCB is a prime, made-in-Ontario example of no-fault accident insurance gone awry. Most would say the concept of cost containment at the WCB is laugable.

The full cost of workers' compensation, amounting to some \$2.4 billion annually, is paid by the province's businesses. Assessment rates in Ontario are high, averaging \$3.18 per \$100 of covered payroll in 1990—up from \$3.12 in 1989—and they range from a low of 14 cents for accountants to a high of \$25.98 per \$100 of payroll for stevedoring. A major leap in assessment rates has occurred since 1984, when the average \$2.17 fell far short of the target average of \$3.14.

Ontario has the most expensive WCB rates of all the provinces and the average of the Canadian provinces exceeds by far the American average. Yet Ontario WCB's funded ratio, that is, assets as a per cent of liabilities, at 38 per cent is by far the most worrisome. While some provinces can boast fully funded WCB systems, Ontario employers are carrying an unfunded liability millstone of some \$7.4 billion at the end of 1988, which adds about 50 cents to the average assessment rate.

The Ontario Legislature created the bulk of the unfunded liability when it indexed the system in December 1985, bearing in mind that ad hoc inflation adjustments have been made since 1974, but the Ontario Legislature chose to saddle employers with the retroactive costs of the indexing. Note that other provinces, namely,

Nova Scotia and Alberta, provided a contribution from their provincial treasuries when they decided to index their systems.

The future for WCB costs and assessments continues to look bleak. The ceiling on covered payroll is to rise in two stages, first to \$42,000 in January 1991 and then to 175 per cent of average industrial wages one year later. Because of the nontaxability of benefits, which are calculated at the level of 90 per cent of net, some claimants will continue to receive more than 100 per cent of their previous take-home pay. This design flaw in the scheme is exacerbated at higher levels of earnings.

Moreover, the WCB and the outside appeals body, the Workers' Compensation Appeals Tribunal, are busy expanding the definition of "compensable accident" to draw in more and more types of conditions that have only the most tenuous link to the workplace. Chronic pain, which continues beyond all reasonable time limits and is not medically verifiable, is an accepted basis for a continuing WCB claim. Chronic occupational stress is under serious consideration by the board. A recent WCAT case determined that an unwitnessed death on the job by reason of heart attack, where the individual had a history of heart disease, is compensable.

In the event that you, as legislators, are anticipating less legal wrangling under threshold no-fault auto insurance, you should look to the experience in WCB. Most of you will know from your constituency work that WCB administration is not straightforward. Tremendous acrimony is engendered by this system which does not seem to serve any of its stakeholders very well. Lawyers and special advisers are heavily involved on both the employer and the employee sides. The government even provides WCB-funded advisers for both constituencies to help people through the mire of the system.

The outside appeals tribunal, WCAT, was heralded by some as a final check on the integrity of the system in paying prescribed benefits where they are due. It has turned into an expensive, lawyer-driven parallel system that has reverted to a very legalistic way of settling disputes in a system that was originally intended to replace tort action for workplace accidents.

ECWC concerns about cost-shifting to WCB under Bill 68: ECWC has grave concerns about cost-shifting to other systems, including individual or company disability plans, the Ontario health insurance plan and especially to WCB.

On 5 December 1989, Hansard recorded the Leader of the Opposition (Mr Rae) raising

concerns over an internal memorandum from the board which indicated that costs to the system would increase by \$25 million per annum. We have obtained an alternative, much higher estimate of the cost to the system based on data from the WCB's legal department.

Of the some 8,000 election forms processed by the legal department in 1988 in which injured workers indicated their intention to take WCB benefits or to sue the other driver, 70 per cent or 5,600 cases had a legitimate personal injury claim. Also, the estimated cost per injury was about \$10,600. So the total annual cost to employers would be approximately \$59 million per annum.

This does not take account of the effect on claim persistency of there no longer being any pot at the end of the rainbow; that is, the possibility of a surplus from a legal action flowing to the injured employee.

Even this analysis is insufficient considering the scope and consequences that the Ontario motorist protection plan could have on the WCB. For example, statistics on the New Zealand plan indicate that a third of the costs of work-related injuries involve automobiles. This result could easily happen in Ontario given the expanding liberal attitude towards social benefits under WCB.

It is not difficult to imagine that the definition of a work-related injury in the course of employment will be challenged by injured workers; that is, accidents occurring while driving to work, and possibly from, could potentially become compensable as work-related occurrences. This is especially true since WCB benefits are significantly higher than those proposed under Bill 68.

Justice Osborne justified the 80 per cent, maximum \$450 level as being reasonably consistent with then existing WCB benefits. Courtesy of Bill 162, the WCB ceiling will rise to \$42,000 in January 1991 and 175 per cent of average industrial wage thereafter. At \$42,000, the weekly benefit is about a third higher than under the no-fault auto insurance system.

The ECWC asks the committee to investigate thoroughly the impact of Bill 68 on WCB along these lines and to propose measures to eliminate or at least curtail the cost-shifting. We see no reason why the auto insurance companies should not be called upon to reimburse the WCB, perhaps on a bulk basis, for the auto injury claims that should not rightfully be paid under WCB.

Mr Yarrow: The Employer's Council on Worker's Compensation is distressed that the already precarious financial situation of the WCB is to be worsened by Bill 68. It is totally unacceptable for the government to condone such a massive shift of costs from at-fault drivers and their auto insurance companies to a system that is funded by employers for the purpose of compensating for workplace injuries.

We urge the committee to investigate in considerable detail the extent of cost shifting to WCB and to rectify the matter by way of a concrete recommendation for reimbursement of the amount.

The Chair: Thank you for your presentation.

Mr Farnan: I really have a couple of comments and they sort of fringe around the presentation that you have made. The first comment I would like to talk about is the great cost of injury at work. There is no doubt in my mind that Bill 208, which is going through at the moment, is something that is very relevant. When we think that one person dies every day and 1,800 people are injured in Ontario's workplaces—and that is basically the cost of doing business in Ontario today—it is a shocking, frightening and striking indictment of our system that our factories will open on a daily basis and we know that one person will die and 1,800 will be injured.

So we, on the one hand, look to better health and safety legislation as being very important, probably the most important thing that can be done. In that regard, one would hope that in processing Bill 208, the government can go back to the original commitments it made to the Ontario Federation of Labour in terms of a bipartite board of labour and business and the ability of the trained certified worker representatives to put a halt, a work stoppage, on unsafe workplaces. I think this is the real area where we are talking about dollars in the workers' compensation area.

Two other things that struck me: You talked about the liberalization of eligibility. My own view is that this liberalization is probably a good thing and perhaps is proceeding too slowly. Now, I know it has cost to the workings of the WCB, but when I look at, for example, correctional officers and I see that their life expectancy is 57 years old—they do not live to collect their pensions—and I look at the horrendous divorce rates within that occupation and in highly stressful occupations, alcoholism and then all the resulting injuries, etc—indeed, when you talk about chronic occupational stresses

under serious consideration by the board, chronic occupational stress should have been introduced long ago, because if correctional officers, as an example, are dying off, on average, at the age of 57, then they are in a dangerous work environment. As a society, we must look at that.

Finally, the point I want to make is, throughout the brief, you talk about the cost to the employers. I would contend that it is not the employers that fund the WCB; as a society, we fund the WCB. Whatever benefits are available to working men and women in the province of Ontario, they pay for them. If the employer is paying a certain percentage for workers' compensation or any other particular protective benefit for a worker, that is factored into the equation, and when the employer works out his profit margin and what he has to pay out in costs, he factors in those costs. When he sits down at the negotiating table with workers, obviously that is part of the negotiating process. You look at your bottom line in terms of reaching an agreement.

So there are parts of this presentation which I agree with very strongly, in terms of pushing the costs over to the WCB, that whole process. I suppose the problem I have with it is that, for example, on page 2 you state that \$2.4 billion annually is paid by the province's businesses. As long as it is understood that businesses do not simply represent employers, that businesses represent employers and workers—that is very important, that by the sweat of their brow, the men and women who work in Ontario's factories and plants contribute to the funding of the WCB or any other benefit that might be available to them.

I wanted to make those points because I felt they needed to be made in the context of the presentation. Also, I want to say that underlying those points, I do support and my party does certainly share your concern about the shifting of these funds and this burden from the insurance industry to the WCB.

Mr Yarrow: We have a couple of comments to make on that. I have a general comment. I appreciate, and I am glad it is on the record, that the New Democratic Party is supporting that there not be a shift from insurance over to the WCB. There are a couple of comments from my compatriots.

Ms Andrew: Yes, indeed, we do appreciate that support. In terms of the comments about health and safety in Bill 208, obviously, this is not the forum. There is another forum going on right now that is examining the tremendous

inadequacies of Bill 208 and the reasons why that bill probably will not address the real issues of occupational health and safety in most of the businesses in Ontario.

On the statistic you provided, Mr Farnan, about one individual dying every day in the province, perhaps the committee would be interested to know that the WCB does gather statistics on the source of those fatalities. I have not seen the most recent ones, but some that I saw a few months back showed that a good number of those fatalities actually happen on the roads, that they are motor vehicle accidents, not people dying in industry and so on. I think it would be instructive for the committee to examine WCB fatality statistics and the source of those statistics and understand just how many fatalities in the course of employment are really auto injury occurrences.

I also wanted to comment on the question about employers not really paying for this system and the suggestion that it is a cost of society. That assumes that employers are basically a conduit for these kinds of costs and they can pass them off to employees, or perhaps to customers in the form of higher prices. To a certain extent that may be able to happen, but to a large extent it cannot happen because of competition for employees in this vastly overheated market in Ontario and because of competition among companies.

They cannot always charge higher prices to their customers. It is not just a flow-through of these costs. These costs do bear directly on the firms, and you have to remember the firms, while they do reckon them into their decisions about whether they can retain staff or hire additional staff, do not all sit across the negotiating table from a union. The vast majority of employees in this province work in nonunionized businesses, and it is not just a bargaining item in the way that Mr Farnan suggested.

Mr Farnan: Could I have a clarification, please?

The Chair: Very quickly.

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Mr Farnan: I think it is just a matter of misunderstanding somewhat. I appreciate your comments in terms of road-related or accident-related deaths. I think that is something I want to check out.

Unionized or nonunionized employees, it really makes no difference. I think what I am saying to you, and I think you half admitted it but you did not admit it, is that when the employer has to look at his costs, this is a factor, and when

he sits down at a bargaining table, when he says, "This is what you will earn," basically he will factor in those costs. In that sense, it is not only the employers who provide the funding.

Certainly, the industrial society is made up of a partnership of employers and employees, and the contribution of the men and women who work on a daily basis has to be factored into this figure of \$2.4 billion that you mentioned. To deny that fact would be to deny the fact that the working men and women of Ontario are actually paying the cost, a significant part of the cost, of not just this program but any program that is put forward.

Mr Frame: A quick further comment, first, about that. I have a very active WCB committee in the construction industry and one of the regular pieces of discussion has to do with that comment about who actually pays. I have had employers come to me and say: "Let's change the basis for it. Let's pay directly to our workers the equivalent of what the WCB costs are and have them pay for it as a payroll write-off of their cheques so that they will see what costs are involved. We are happy to pay it directly to them, but let them see that." If there is a basis for further discussion on that, I would be happy to talk to you about that.

Mr Farnan: I would like that very much.

Mr Frame: One other comment, just to summarize what we have been into, you have talked about a lot of the give and take of WCB as you expand the system and provide further benefits versus the argument of the great costs that are relevant to that. We have a unique situation here where the benefits to working people are being cut, being reduced in this area, and it is costing employers significantly more at the same time.

Mr Farnan: The same as insurance. On that basis, we agree that what you are getting, as it was put yesterday, is half a loaf for the same or a higher price, and that is a reduction in service. So, yes, I think we agree.

Mr Frame: That is exactly the problem.

The Chair: Mr McClelland and Ms Oddie Munro, five minutes.

Mr McClelland: Between us?

The Chair: Between you.

Mr McClelland: Okay, I will trust you, Mr Chairman, just to let you know where I would like to go on this. I have a brief comment and question to Mr Yarrow, to Ms Andrew, and then I would like to solicit some information from the parliamentary assistant.

The Chair: Okay.

Mr McClelland: I will try to be very quick. I did not know we were getting into Bill 162 and Bill 208. Mr Yarrow, thank you for being here—the three of you, by the way.

You mentioned in your opening comments the surplus amounts that previously flowed to injured workers in terms of the ability of WCB to collect back those surpluses. I am sure you are aware, and I would be interested in your comments, that part and parcel of the philosophy, if you will, of the government—and you and I have had some interesting discussions about our different philosophical approaches with respect to the current government—is that, clearly, with Bill 162 and with the current legislation, we are saying the emphasis has to be in terms of getting people back to work. That has to be the consideration, both in terms of workers' compensation reforms and, as well, in this legislation. Part of the result of that is that we have created a system that says, effectively, that there will not be any windfall for people who are injured.

We are approaching this basically on the philosophy that insurance for accident benefit, wage-loss indemnity, is that and not more; that people ought not to be put in a position—and there may be some philosophical argument; quite candidly, that is my position—where they end up better off as a result of an accident.

Mr Yarrow: But they are.

Mr McClelland: We are saying in terms of this auto insurance that this will not be the case, and I want to draw to your attention that we are committed to that philosophically, bearing in mind that we are not here to discuss WCB. I want to make that point clear.

I think it is important to understand that one of the foundation philosophies of this legislation is to take the accident victim to a place where he or she can receive income replacement quickly. That is an underlying philosophy. That may engender a response, I am not sure, but I think it is important to point that out. Notwithstanding the difficulties with WCB, which I grant are there, we have anticipated that and tried to avoid that with respect to the income replacement in this legislation.

Mr Yarrow: Irrespective of the comment of Mr Farnan, we started off and we continue in here today not to discuss the philosophy of the bill.

Mr McClelland: I realize that.

Mr Yarrow: We are talking only about the impact on WCB.

Mr McClelland: Okay. But I think it is important to note for the record that it is not an apples-and-oranges comparison; nor is it apples and apples. It is quite different.

Similarly, Ms Andrew, I would like to just point out a couple of significant differences with respect to the analogy or the parallels that you tried to draw with a pure no-fault system. It is an interesting, thought-provoking position that you bring.

There are some important differences. I think it is important to bear in mind that the compensation paid to an injured victim of an automobile accident would be through an independent business person, ie the broker. My broker, if I have the unfortunate experience of being injured, will be the one who is delivering the payment to me. That will be within a competitive framework. We do not have, if you will, an institutional bureaucracy system, which I say, quite frankly, without any fear of criticism, that I share with respect to WCB.

You say halfway through your last paragraph on page 3, "...WCB administration is not straightforward." Indeed, each and every one of my colleagues knows that from our work. That is an important distinction. When you talk about no-fault in terms of auto insurance and WCB, I think there are some important distinctions.

It needs to be understood by people that it will be in a competitive marketplace, administered and delivered by independent business persons throughout Ontario. I would hope that would have a significant effect. The competitive aspect would certainly ensure the timely, efficient delivery of compensation to the client, to the accident victim. I just wanted to make that point because I think the analogy is not quite consistent, and I say that with a great deal of respect.

Ms Andrew: I hope you are right that it will provide timely and more fair compensation to accident victims. The parallel to the WCB here has to do with the legal wrangling. Frankly, we suspect there will be a lot of that. There will certainly be a lot of legal wrangling over what this threshold actually means and who can actually proceed with a suit, and that will not be the first of it and who knows what will follow.

I want to comment on your earlier suggestion about WCB and the recent initiatives to speed up the return to work of injured workers. I think that is part of the problem with Bill 68, and it is alluded to in this third paragraph on page 4 under our concerns on Bill 68. The question of there

being no pot at the end of the rainbow, no possibility of any settlement coming through a legal suit may, in fact, have a deleterious effect on persistency rates for the WCB. In other words, people may not be in such a rush to get back to work because they are also not going to get anything for their pain and suffering, which they would have previously. In terms of early return to work, there is an aspect of Bill 68 that can work against that.

Mr McClelland: I do not have the time and the chairman is going to cut me off if I pick up on this, but I want to get some information, if I could, from the parliamentary assistant. Can I just ask the parliamentary assistant, Mr Chairman—

The Chair: At the risk of eating into your colleagues' time?

Mr McClelland: I am sure we can go a couple of minutes longer.

The Chair: You guys can argue that out.

Mr McClelland: I think it is important. I think the conclusion that Mr Yarrow brought up is really significant. In his conclusion he talks about what consideration has been given with respect to the extent of cost-shifting to WCB. I would appreciate a comment from the parliamentary assistant to assist us in that regard.

Mr Ferraro: Suffice it to say we acknowledge there will be some cost transference to the WCB system. We feel, however, that there should not be an increase in cost to the employer because, as I am sure some people would agree, most hopefully there will be a cost saving to the employers from the standpoint of their auto insurance liability premium as a result of the threshold. I should also point out that obviously the threshold does not preclude any legal action when the threshold is met. They can still take it to court.

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Finally, let me say with respect to the figure of \$59 million that has been indicated publicly, another figure that has been subsequently been made public is the \$21-million figure. In any event, I will conclude by saying that active discussions are progressing between the ministry and the WCB, and hopefully clarification of facts and/or figures and reality will be made evident soon.

Mr McClelland: Thank you for your indulgence, Mr Chairman.

The Chair: Thank you for your presentation. Unfortunately, we are out of time.

I have two matters for the committee to consider before we adjourn for lunch. One, as I brought to your attention yesterday, the select committee on education has a requirement to receive a presentation in French on Thursday 25 January in the afternoon. This room has a capability of doing that without going to the approximately \$3,000 cost that the select committee on education would have to go through if we did not voluntarily agree to swap rooms. Can I seek agreement that we could meet somewhere else? Mr Kormos, is that agreeable? Okay?

Mr Kormos: No, I have to speak to it, however briefly.

I appreciate the forenotice, and indeed it was Thursday 25 January, not Thursday tomorrow that we are talking about.

The Chair: No, no. Thursday 25 January.

Mr Kormos: That is right, and that was clarified. I note that in the afternoon at 2 pm, the Hamilton Law Association is making a submission. I know the Hamilton bar has been very active in its analysis of the legislation and in presentations. They are the only people I am aware of who might feel hard done by, in so far as I am aware; other people may well feel hard done by it.

I am wondering if you might consider letting the people from Hamilton know that if they can come here at 12 they can make their submission between 12 and 12:30, have the benefit of the broadcast and then we could resume, let's say, at 2:30 in the other room. That is the one about which I have some concern. There may well be others about which I should have concern that I am not aware of. I am wondering if that might be a resolution.

The Chair: In terms of public presentations, certainly any media are invited to go along to whatever room we go to. I will leave it in the committee's hands.

Mr Velshi: If we were saving \$3,000 overall, I would go for it, but what Mr Kormos says is also true. It should be taken into account, if possible.

The Chair: Okay. So we instruct the clerk if one of two situations happen or do not happen: One, if they are able to come at 12 o'clock to 12:30 on Thursday the 25th to have the presentation here; if they are unable to do that and it does not bother them that they will not be in room 151, can we still—

Ms Oddie Munro: What other witnesses will be appearing that afternoon who might want to be accorded the same consideration?

The Chair: I think the clerk just distributed the agenda.

Ms Oddie Munro: I do not have it.

The Chair: It is the last page: Hamilton Law Association at two; at 2:30, the Social Planning and Research Council of Hamilton and District; at three o'clock, the central region of the Ontario Psychological Association; at 3:30, Family Mediation Inc; and from four o'clock on it is individuals, Donald Grant, Ilya Trest and Robert Agnew.

Ms Oddie Munro: I would think all those people would want to be accorded the public—

Interjection: That is true.

The Chair: I am looking for a motion from somebody. What I am getting is a sense that we do not want to give up our room.

Ms Oddie Munro: Yes.

The Chair: Unless there is unanimous agreement, I am going to say that the committee is not prepared to change rooms.

Mr Kormos: What I was trying to say is that I think, along with Mr Velshi, there could be some compromise arrived at whereby the room can be granted. Again, Ms Oddie Munro can speak perhaps more properly about some of the other Hamilton groups, and that may be her concern; I am not sure.

Mr Farnan: It strikes me that is where we have to go. Mr Kormos has suggested that one group in particular may have a concern. We have got about 10 groups here, and any one of these groups may feel that it is being denied the same privilege of broadcasting its message in the same way as all of the other presentations.

The Chair: I am simply going to instruct the clerk to get back to the clerk of the other committee that we are going to be using room 151 for the whole day.

Mr Farnan: I think the reality is that it is not something we have any control over. It is because these groups may feel they are being denied the same privileges as the other groups appearing before the committee.

Mr McClelland: Since I appear to be the only one of a contrary mind, I just want to say that as we travel from place to place across the province there will be citizens from other regions who will not be afforded the opportunity of being on TV. In the spirit of compromise and efficiency, and quite frankly the dollars-and-cents aspect of it—and I do not say this in any discouraging way to people who are scheduled for 25 January; they are no lesser or greater than people elsewhere in

the province who will not be afforded the opportunity of having their comments televised—I want to go on the record as saying I am prepared to arrive at a compromise solution. Albeit that it frightens me, Peter, I am in accord with you on that matter.

Mr Kormos: God bless you.

The Chair: We are talking about three organizations or groups, if the Hamilton association is prepared to come, say, at 12 o'clock.

Clerk of the Committee: At 12:30?

The Chair: No, 12 o'clock. We have one from 11:30 to 12 and from 12 to 12:30.

If we are looking at a compromise—they need the room, I believe, at four o'clock—the other thing I might suggest is if you are prepared to sit right through lunch with the other groups that the clerk was able to contact, we would not break for lunch but work right through. That would take us, I think, probably until about three or 3:30 and then allow the room to be available for four o'clock, if that meets with the other committee's requirements. Our clerk will check that out with the other clerk.

Mr Kormos: I commend you for your creativity and imagination in resolving this particular problem. If only you could apply it to the problem that the insurance industry has generated in this province.

Ms Oddie Munro: One step at a time.

The Chair: Before we break for lunch, there were some questions aroused and raised—a lot of arousals—around the conduct of committee members. I am speaking generally to all committee members, not just individuals.

Mr Kormos: No, you are not.

The Chair: No, I am speaking to all committee members. I think there are four points I want to make and then I am going to break for lunch. I am not even going to entertain any discussion. If we want to get into it, we can get into it tonight.

The first point is that in terms of the privileges of sitting on the committee, the committee is an extension of the House and there are certain privileges that the House has which individuals can partake of in terms of comments, statements, whatever, that they do not have once they step outside the door, whether it is in the Legislature or outside this committee room. That is one point I want to make.

The second point I would like to make is that, hopefully, as committee members we are able to express our opinions or ask questions without abusing, berating or impugning motives or the

integrity of committee members or witnesses who appear before us. If that is viewed as censoring in terms of asking individuals to try to respect that, then I am guilty of censoring individuals.

The third point, in checking with the Speaker, is that in terms of the conduct of the committee, basically it is left up to the committee to determine how it conducts itself, both within the confines of a public forum as well as behind closed doors, if and when we go behind closed doors for any matter. There is no ability by any committee member to instruct the chairman to remove someone from a committee.

The only item that is appealable to the Speaker is a successful challenge to the ruling of the chair. In other words, if someone challenges the chair and is upheld, then there is an appeal process to the Speaker. The chairman is charged with the responsibility of ensuring that conduct, both by the witnesses and by the committee members, is in as responsible a manner as possible. The only recourse that a chairman has is not to recognize individuals in terms of questions, turns to speak or whatever. That decision can be challenged if an individual wants to, but I am led to understand that there is no discussion in terms of challenging a ruling by the chair. That comes if it is successful, and then there is an appeal process to the Speaker.

I would also like to reinforce that in terms of dividing the time equally among the three parties, it is up to the three parties to determine how they want to best use that time. If you want to use it simply to make a comment, statement or whatever, that is the party's right.

I have had suggestions in the past that it is probably a good suggestion that I, when there is a minute of time left, indicate somehow that there is one minute remaining. Given the time, I will try to be as flexible as possible with the witnesses as well, because there are times when witnesses want to respond, even if it is only to a comment or a statement.

Regarding the only power that is available to me in terms of not recognizing individuals, (a) I hope I never have to use it and (b) it will not be used lightly.

I would just ask individuals, all committee members, to give serious consideration over lunch to their conduct because we are televised for not only most of the hearings but in fact all of the hearings, and even during clause-by-clause consideration the committee has the use of room 151.

The committee recessed at 1212.

AFTERNOON SITTING

The committee resumed at 1400 in room 151.

The Chair: Good afternoon, ladies and gentlemen. I would like to welcome the Police Association of Ontario. We have half an hour for your presentation. Perhaps you could divide that into approximately 15 minutes for the presentation and 15 minutes for comments and questions. The committee is at your disposal for the next half-hour.

POLICE ASSOCIATION OF ONTARIO

Mr Roland: My name is Ian Roland. I am counsel to the Police Association of Ontario and I am with the firm of Gowling, Strathy and Henderson. On my left is Ted Johnson who is the administrator of the Niagara Region Police Association. He is also chairman of the executive committee of the Police Association of Ontario and a past president. On my immediate right is Richard Houston who is the executive manager of the Police Association of Ontario. On my far right is Jim Kingston who is the executive manager of the Ontario Provincial Police Association and a member of the executive committee of the Police Association of Ontario. You should have a written submission which I am going to read. I provided to the clerk some 25 copies.

The Police Association of Ontario is an association of all the municipal police associations in this province and the Ontario Provincial Police Association. As such, the association represents 17,000 police officers and about 3,000 civilian employees of the various police forces in Ontario. It is an umbrella organization, not unlike the Ontario Federation of Labour.

On behalf of the police employees of this province, we wish to express to you the association's strong opposition to the loss of income provisions contained in Bill 68.

Some civilian employees and most police officers represented by the association earn about \$40,000 to \$50,000 per year. If our members are injured in an automobile accident through no fault of their own, the plan restricts recovery of loss of income to \$23,400 annually per member. The plan prohibits our members from suing for the balance. As a result, a member will suffer substantial loss of income, in most cases almost 50 per cent, even though he or she was not at fault for the accident and injuries. This may have obvious and serious consequences for our members.

In addition, many of our members will receive nothing from the plan insurers for loss of income even though they suffer such loss caused by the negligence of other drivers. This comes about because most of our members have access to loss of income payments under either an income replacement insurance plan or a sick bank system negotiated with their employers by the local police associations.

For example, many members have access to a sick bank into which they have had attendance credits deposited on their behalf. These credits have been earned by members over the period of their employment. The purpose of the credits is to provide a measure of income protection in the event a member is ill or unable to work.

The plan requires the sick credits be used to cover loss of income as a result of a motor vehicle accident before a member has recourse against a plan insurer for loss of income.

In effect, this means that a member must fund his or her own loss of income from the member's own savings—that is, the savings in the sick bank scheme with an employer—when the member is injured because of the negligence of some other driver. If a member is later sick for some other reason, he or she may have no sick bank to draw upon and thus no income protection. Obviously the plan leaves our members and their families extremely vulnerable to serious financial hardship. This situation is created by the current provisions in the plan.

Other members have short- and long-term income replacement insurance that has been negotiated with police employers by the members' local police association. This income replacement insurance is negotiated as part of the employment benefit package. The plan requires a member who is an innocent victim in an automobile accident to look to income replacement insurance through employment for loss of income. This means that in most cases our members will not be able to recover any money from a plan insurer.

As a result of these grossly unfair, even punitive loss of income provisions found in the plan, members will be forced to pay higher insurance premiums for income protection plans through their employers. Members will be forced to fund their own income protection twice, once through the plan, for which they will receive nothing for loss of income, and again through their employer at a higher cost because that

private plan will now be forced to cover all of the member's loss of income if the member is injured in an automobile accident due to no fault of the member.

As we trust you will appreciate, the loss of income provisions in the plan are extremely unfair. Our members will be required to pay much more for less. This is neither fair nor consistent with the expressed rationale of the government's new scheme to keep down the cost of insurance premiums. For our members and for many others in Ontario who are in a similar situation, the new plan will have the opposite effect. It will dramatically increase insurance premiums and force relatively modest income earners who have income protection schemes through their employment to subsidize both negligent and innocent drivers and passengers who do not have income replacement schemes through their employment.

Bill 68 must be amended in a way that addresses the unfair loss of income provisions that penalize our members. The following amendments must be made:

First, the maximum of \$450 is much too low. It should be increased to at least \$750 a week in order to avoid the kind of economic hardship that will otherwise befall many individuals, especially in expensive urban Ontario, who will otherwise find themselves grossly underinsured and unable to meet their obligations or the needs of their dependants. The maximum amount should increase yearly to reflect inflation.

Second, loss of income should be paid without a requirement that the injured employee first look to employee sick leave plans or employee income protection insurance plans for loss of income payments. If there is a concern about double recovery, which rarely occurs, it may be stipulated that when loss of income payments are payable by a plan insurer, sick bank or employee income protection insurance plans may only be used to cover the difference in loss of income between plan payments and the actual loss. This is what happens in most cases with the present system today, whether one is dealing with an employee income protection insurance plan or a sick bank system.

For example, we have set out a weekly income of \$950 dollars. With the present scheme of \$450 as a maximum, or as we suggest as an alternative a \$750 weekly maximum, then the sick bank or employee income protection plan will pay up to \$500—that is the difference—or up to \$200.

This amendment puts everyone on the same footing. It treats employees with employment

sick leave plans or income protection plans like all other income earners who may in one fashion or another personally increase their own income protection coverage above the limit set by the plan.

As you must recognize, the proposed loss of income provisions in Bill 68 are seriously flawed. On behalf of our members, we urge you to report to the government that Bill 68 must be amended in the way and for the reasons we have indicated.

Mr J. B. Nixon: I have a couple of questions. The first relates to your understanding of how the employee may or should or can utilize his sick plan. My understanding of the legislation is different from yours and perhaps I could ask the parliamentary assistant to clarify it. My understanding is that the decision to use sick days is a decision at the discretion of the employee. There is nothing in the legislation that requires the employee to use the sick leave before going to the auto insurance policy for benefits. Perhaps you can clarify that.

Mr Ferraro: Mr Nixon is right. It is at the discretion of the employee. He can take leave without pay, which of course would then allow the no-fault benefits: \$450 which is the equivalent of about a \$30,000 wage in Ontario. However, I must say in fairness that this is allowed assuming the collective bargaining agreement makes that allowance. A large proportion of the workers in Ontario today have that option in their plan; admittedly, a substantial portion do not.

Mr Roland: I am not sure; probably some of our plans. There are of course a whole host of them across the province, in each collective agreement. I am not sure whether it is an option or not, but it does not solve the problem, quite frankly, because at \$450 you are not going to have sufficient funds if you simply take unpaid leave and resort only to the plan. You are not going to have sufficient funds available to you to meet your obligations. What we say you should be able to do is look to that and be able to subsidize or increase it beyond that up to your full salary by reference to the sick bank.

1410

Mr J. B. Nixon: My understanding is that if you are making more than \$30,000 a year—the \$30,000-a-year income gets full coverage; the \$450 is after tax—you very likely would buy the additional coverage you require to top it up.

Mr Roland: You see, we have already got it. We have the additional coverage in a bank. We

have additional savings available to us. You say we would buy it. What you are saying is, "Make your own other arrangements to cover the surplus."

Mr J. B. Nixon: That is right.

Mr Roland: We already have, and that is why we ask for the amendment, our own arrangement where we have these banks. Let us do it without being penalized. Let us draw on these sick banks, which are a kind of other arrangement. It is not an insurance arrangement in all cases, but it is an arrangement with our employer.

Mr J. B. Nixon: I do not think anything prohibits you. That is what I am saying.

Mr Roland: It is certainly not clear from the legislation and we would like it to be clear. That is why we ask for that amendment, that if you are going to set whatever limit—we say \$450 is too low but if you set it at \$450 or whatever—we have access to that, and for the difference we can look to another arrangement whether it is separate purchased insurance, or in this case, a sick bank to top up the difference.

Mr J. B. Nixon: The second question, very quickly: I take it there is a distinction between whether the accident happens when you are on duty or off duty.

Mr Roland: Sure. If you are on duty you are covered under workers' compensation.

Mr J. B. Nixon: That is right, so we are only dealing with private coverage off duty.

Mr Roland: Yes. That is all we are dealing with in our presentation, and that is all the association is dealing with. Our members are not saying the scheme is perfect there either; there are problems with it, but that is not the focus of our presentation.

Ms Oddie Munro: I was going to comment and then ask for your reaction. The \$450, especially when you take a look at it in terms of the amount of \$140 per week right now for an employed person, assuming the person cannot sue, was done to avoid the regressive nature of the total income or at least bringing the payment up to your current income of various jobs. We felt that the \$30,000 was a median and that if in fact you raise it above the \$450, it is regressive and places an undue burden on the amount of insurance premiums that wage earners pay who make \$30,000 or less. This is why the option, although that is not necessarily a good term, to purchase additional coverage was put in. I wonder whether you would care to comment on that.

Mr Roland: The problem of course is that for urban Ontario and for an awful lot of people who work in urban Ontario, such as police officers and the people we represent, civilians, \$30,000 is pretty low, and they do not have a lot of other income available to them to purchase other plans. Most of our members are barely able to make their mortgage payments and other payments at \$40,000 or \$50,000 in the greater Toronto area, where a good deal of them are, in Metropolitan Toronto, Halton, Peel, Hamilton and so on. There is not much other income available to these people to purchase additional private coverage.

Ms Oddie Munro: So you are saying that the cost of living, which includes the geographical location, is not necessarily—

Mr Roland: That is right. It may be so in some other locations in Ontario, but we think that for a great number of our members the \$450 is too low and they do not have available to them the additional income you talk about to purchase additional plans.

The Chair: Just as a question, you mention that if an officer is involved in an accident when he is off duty he has a bank available to him. Is it disability income or is it just sick time off?

Mr Roland: What happens is that they have sick leave that they bank. It is attendance credits. You bank a day or a day and a half a month into a bank system and then you can draw on that system.

The Chair: At full pay?

Mr Roland: At full pay. Now, you can draw portions of it; you do not have to draw a day for a day. If you have, for instance, \$450 a week, you could draw it at half days or whatever. You cannot go beyond your full pay of course, from all sources, but it is another source for funding your loss of income.

Mr Kormos: Let's not lose sight of what is happening here. At present there is a no-fault system in this province. There has been one for in excess of 10 years and as it is the numbers, the amounts paid out under those no-fault benefits are atrociously low. The reason is that the passage of time has eroded them to the point where \$140 is an absurd amount as a no-fault benefit for the purpose of wage replacement. Indeed, it has been pointed out that had that been indexed as it properly should have, it would be darn close to \$450 now in any event.

The big difference is that under the existing no-fault system one can seek the shortfall against the wrongdoer. One can get full wage replacement, not 80 per cent, or a ceiling at \$450. One

does not have to utilize one's banked sick time, which is there in case you get sick, not in case some drunk driver runs you down. One does not have to utilize his long-term disability, which is there in case you suffer a long-term disability, not because some drunk, careless or reckless driver mows you down.

What I see as the difficulty here is that the drunk driver, the negligent, careless reckless driver is being protected against the responsibility for covering that shortfall.

Mr Roland: You raise an interesting point and it is a point that is not addressed, but it has to do with the criminal on the road. This does not focus on the police as the victim any more than anybody else, but the criminal on the road of course is exempted as a criminal under the Compensation for Victims of Crime Act, as you may know. You cannot go to the Criminal Injuries Compensation Board to make a claim there because of a criminal act committed against you by a driver on the road.

The reason that was exempted when the act came in in 1971 was because there is in place the motor vehicle accident claims fund, which has been in place for years, to handle compensation for victims of crime and highway accidents. It handles not only victims of crime, but victims of negligence too. It handles all of them and it pays out all sorts of things, loss of income, pain and suffering and so on. The motor vehicle accident claims fund pays that out and so does the Criminal Injuries Compensation Board.

The interesting thing you are going to be left with with this scheme is that apart from the loss of income provisions, you are going to be left with the situation where victims of crime in this province can go to the Criminal Injuries Compensation Board to claim, among other things, for pain and suffering, general damages, but they cannot go if they are the victims of crime on a highway.

You are really creating two classes of crime by this legislation and you say one is more serious than the other: "If it is nonhighway traffic crime, then it is not serious enough that we are going to permit you to have any pain and suffering, general damages. If you are a victim of crime off the highway, we will give you something." It is modest in comparison to civil actions, but the Criminal Injuries Compensation Board can make awards for, among other things, pain and suffering. You are creating two classes of crime by this legislation as well.

Mr Kormos: We have told police officers across the province, "Go out there and nab drunk

drivers." That message has come from the government. It has come from the grass roots in the community. It has come from the parents of victims of drunk drivers. We have told the police, "Go out there and get drunk drivers and don't come back with any excuses about the how, when, why or where." Mind you, sometimes I am fearful we have not given them the tools to go out there and get the drunk drivers.

The government indicates that it is not going to pay drunk drivers their wage replacement under no-fault benefits, but it will pay them their wage replacement until the point in time when they are convicted. I am sure every one of you knows and anybody else who has ever been in a courtroom knows what that is going to do. There is not going to be a lawyer in town who is not going to delay the trial of his or her client who may have suffered an injury and been charged with drunk driving to avoid being cut off the wage replacement. That is going to make a mockery in my view of the whole processing of, in this particular case, drunk driving charges.

1420

The government is inviting those people to not plead guilty, to delay their trials and to generate additional backlogs in our courts, and the fact is that the drunk driver, who has not pleaded guilty, has not been convicted, has not lost his licence and is still on the road driving and, as you people know in more than a few cases, is accumulating more drunk driving charges before he has disposed of the first one. What do you have to say about that?

Mr Roland: We should have you on retainer to the Police Association of Ontario. It is a good point and a point that I think would concern police officers. The side I was focusing on was not on the criminal but on the victim.

Mr Kormos: I appreciate that.

Mr Roland: The victim is treated differently if he is a criminal victim on the highway than if he is a criminal victim off the highway.

The Chair: Gentlemen, thank you for your presentation. It is appreciated very much.

From the Ontario Teachers' Federation we have a number of individuals, and I ask the delegation to come forward and identify themselves. We have half an hour for your presentation. The brief is being distributed by the clerk. I suggest you use 15 minutes for the presentation and allow 15 minutes for some questions, comments and discussion. Please identify yourselves and take it from there.

ONTARIO TEACHERS' FEDERATION

Mrs Wilson: My name is Margaret Wilson. I am secretary-treasurer of the Ontario Teachers' Federation. On my left is Ms Ruth Baumann, who is an executive assistant with the federation. On my right is James Carey, who is also an executive assistant to the federation and Barbara Grizzle, who is from the Ontario English Catholic Teachers' Association.

I would like to apologize to the committee for the absence of our president. She was in Ottawa this morning and is still in Ottawa this morning; she is fogged out of Toronto, I suppose is the way one might put it. Pearson airport is closed.

The Ontario Teachers' Federation welcomes the opportunity to exchange viewpoints with the Ontario government through the legislative committee process and to express its serious concerns regarding elements of the proposed Bill 68 legislation.

OTF represents all of the province's 122,000 practising teachers in the publicly funded school systems. We view the proposed no-fault automobile insurance scheme, called the Ontario motorist protection plan, as regressive, lacking in fairness and punitive. It introduces a scenario where those who can afford additional protection will buy it and those who cannot will suffer the consequences.

OTF is fully aware that car insurance legislation cannot single out teachers when it comes to the protection of existing benefits but suggests that teachers and many other Ontario residents who have achieved benefits through collective bargaining may experience additional hardships when it comes to the administration of the proposed plan.

On behalf of our 122,000 members, we present the following positions for the benefit of your committee and the government of Ontario.

1. OTF would favour a no-fault car insurance program if it were properly planned, legislated and administered in a fashion similar to that found in the provinces of British Columbia and Manitoba.

2. OTF believes it is commendable of any government to attempt (i) to protect consumers against uncontrolled insurance costs and (ii) to cut down on the number of traffic fatalities, traffic accidents and property damage in the province of Ontario.

3. OTF is opposed to the particular government legislation, Bill 68, for the following reasons:

- (i) The legislation singles out those employees who have negotiated cumulative sick leave

plans. Bill 68 will deplete the employees' sick leave credits should an accident take place which causes the employee to be unable to work, thus denying the employee access to accumulated sick leave days should it be necessary for him or her to be off work due to illness caused by poor health. The primary purpose of accumulated sick leave days, which have been negotiated through collective bargaining, is to protect, for salary purposes, the employee who is ill and unable to work. Teachers, as an occupational group, are exposed to a greater degree than most employee groups to the full range of illnesses suffered by children. They are therefore particularly vulnerable when their sick leave credits are reduced.

OTF is of the view that employees who have taken every step to maintain their good health should not have their accumulated sick leave days wiped out by an accident, particularly one that was not their fault.

- (ii) The compensation cap as outlined in the proposed legislation, \$450 per week maximum and \$500,000 in rehabilitation payments over and above OHIP coverage, does not provide for full compensation for economic loss by innocent victims of accidents. Someone earning \$40,000 a year who is injured and spends a year off work would receive only \$23,400 in compensation. A very, very large number of our members would fall into this class of person.

The proposed limitation does not match the benefits presently available under the Workers' Compensation Act, nor is there any suggestion that the maximum weekly income would be indexed.

- (iii) Bill 68 does not provide for an insurance company to compensate the employer for the full costs of the employee's income. This would permit the employee to be absent from work due to an accident and not be deprived of an appropriate wage income.

- (iv) Bill 68 lacks a provision of subrogation. This would permit the insurance company paying long-term disability payments to apply to the auto insurance company for compensation for the costs of long-term disability benefits and additional medical costs. One of the consequences of the bill as presently written is that it will drive up the premium rates for long-term disability insurance, since the present rates are provided on the assumption that protection is provided in the case of accidents via automobile insurance.

- (v) Bill 68 does not permit the victim of an accident to sue for psychological reasons, while it does permit suit under section 231a for permanent serious physical damage. I suppose

one of the questions we were asking ourselves there is, are we saying that mental health is less real than physical health? The right to sue is a fundamental right and is the appropriate method of seeking compensation in motor vehicle accident cases. It should be preserved for the citizens of Ontario, and specifically, if it is allowed in serious cases of physical damage, it should equally be allowed in serious cases of mental damage.

(vi) Bill 68 does not protect workers, including teachers, who have struggled to gain a reasonable and fair benefit package through the collective bargaining process.

(vii) Bill 68 will force employers to amend their sick leave plans so that the plan cannot be used in situations involving motor vehicle accidents. Since we heard the previous presentation, it might be worth while pointing out that for teachers in Ontario, sick leave is part of a statutory system in which the accumulated sick leave is transferable from one school board to another when a teacher moves, and we see this being an additional complication for us.

(viii) Bill 68 does not appropriately define a "bodily function," therefore creating additional concerns for the victim, and leaves the entire matter open to additional litigation. We would ask you to consider clarification, particularly of section 231a. The fundamental error of assuming that "bodily function" is a clear term may result in creating more work for trial lawyers, rather than less opportunity, as has been suggested.

4. Bill 68 presents a golden opportunity for insurance companies to provide to employers and employees a new insurance product, which would then be seen as a means of providing full wage-loss replacement as a benefit. Bill 68 provides an opportunity for insurance companies to add new product lines to their insurance program which would provide the opportunity of protection for only those people in Ontario who are able to afford or to bargain collectively for such luxuries.

5. Bill 68 should legislate in such a fashion that if sick leave credits must be used by victims of motor vehicle accidents, then insurance companies would be mandated to repay the money to employers to replace the loss of accumulated sick leave time.

6. Bill 68 in its present form is a regressive step for teachers and many other employee groups in our society and does not, in our opinion, restrict the potential for litigation by trial lawyers, as has been suggested as one of the virtues of the bill.

There are other aspects of the bill on which we might comment. These are our most serious objections to the bill and we would welcome questions.

The Chair: Thank you for your presentation. On page 4, the \$40,000 figure you indicate, is that gross or net?

Mr Carey: That would be gross.

The Chair: And is the \$23,400 gross or net?

Mr Carey: That would be based on the \$450 per week.

The Chair: So that would be net then?

Mr Carey: Yes.

Mr J. B. Nixon: Thank you for appearing before us and presenting your brief. As a matter of clarification, on page 2 you refer to the OTF being in favour of a no-fault car insurance program. Without putting words in your mouth, I think you really mean a publicly operated car insurance program.

Mrs Wilson: I think the two provinces we have used as examples might indicate that.

1430

Mr J. B. Nixon: Yes, because later on in your brief you suggest that the right of an individual to sue is something that you uphold and would prefer to see continue.

Mrs Wilson: Yes.

Mr J. B. Nixon: You should be aware, just for your information, that Manitoba is seriously considering a complete no-fault auto insurance program that would bar all people from the entitlement to sue.

Mrs Wilson: Yes, I am aware that Manitoba is looking at revisions of its plan. I would say that, in terms of our view of Bill 68, we would wish to look at the kinds of protections available to individuals in the particular plan before making a value judgement on whether or not the right to sue should be given up lightly.

Mr J. B. Nixon: Again, without putting words in your mouth, your real concern is the adequacy of compensation to injured victims.

Mrs Wilson: We are concerned about the adequacy of compensation. I suppose we would accept the concept in Bill 68 that, in talking about a serious injury, you are trying to make a value judgement about "how serious" before you would allow a suit. We have made the point that mental illness is something that you should be considering and I am sure you are.

We are not unwilling to make value judgements about where cutoff points are. We do think

that the value judgement that has been made about compensation is inadequate in this bill and we are quite concerned about the sick leave provision. I do understand that people have options, but \$450 a week is not an option for a teacher. It will be sick leave.

Mr J. B. Nixon: One of the benefits of the system that has been explained to me, and I agree with this, is that even if the teacher is a victim of an accident and is therefore temporarily unemployed and is taking the benefit of his or her sick days, or is taking the benefit of the auto insurance plan if that is what he chooses, and that may be an arguable point, at some point the long-term disability plan kicks in, assuming it is a relatively serious injury and the teacher is off for a lengthy period of time.

For instance, if you have a long-term disability plan that covers 60 per cent of your salary, and let's say the teacher is making \$1,000 a week and therefore he or she would get \$600, in no-fault benefits this proposed package would top that up to 80 per cent of salary, which is not a benefit you get now under the existing no-fault benefits.

Mrs Wilson: The difficulty that you have and we have with that, and I do see it as a collective difficulty, is that you are making assumptions about how many people are covered by long-term disability insurance. Not all teachers are covered, because it is a locally bargained benefit.

The second thing is that the number of days of sick leave that must be used before LTDI clicks in varies tremendously from one plan to another. So when you try to make assumptions about the kind of protection that you are building in legislation related to widely varying insurance schemes in collective agreements, it is difficult to make a valid assumption. You cannot make a consistent one that would work everywhere. For example, there is the city of Toronto versus Timmins. The plans may be quite different.

So I accept your point that the top-up may be adequate, but I do not know which plan it would be adequate for, nor do I know whether or not a teacher would have to use up 200 days' sick leave before the LTDI clicks in. There is a tremendous variation in that, so I do not trust that as a protective mechanism.

Mr Carey: Certainly some of the plans would cause you to use your sick leave days before the LTDI would kick in.

Mrs Wilson: Some of the plans actually say that you must use them all.

The Chair: Thank you for your presentation. It has been very helpful.

The Ontario Chamber of Commerce. We are a couple of minutes early, we appreciate that. If your whole delegation is not here, we can recess.

Interjection: They are just in the hall.

The Chair: They are just in the hall, okay. Do we have Mr Rabinovitch from Cycle Watch?

Interjection: He is not here yet.

The Chair: Okay. I would suggest a five—well, let me ask again then. The Ontario Coalition of Senior Citizens' Organization. Is everybody here who is coming? Come on forward. I will make a quick judgement here and we will just do a switch for a second. Wait a second. Do you have all your people now too? Okay. We will put you back to 3:30 pm. Sorry about that.

The clerk will circulate your presentation. I would suggest for the next half-hour, if you divide it 15 minutes for presentation and allow 15 minutes for some comments, questions and discussions, we would appreciate that. I would ask the main presenter to identify the individuals who are with us, and please be seated.

Mr Cain: I do not think it will take 15 minutes for the presentation portion, so we should not have any problems in that respect.

ONTARIO CHAMBER OF COMMERCE

Mr Cain: The delegation of the Ontario Chamber of Commerce consists of our president, Linda Matthews, on my left, who is also a former chair of the chamber's insurance committee; Elaine Rehor, the assistant general manager of the Ontario Chamber of Commerce on my right, and myself, Patrick Cain, the current chairman of the insurance committee.

We appreciate the opportunity to appear before you on behalf of our 165 member chambers and boards of trade, with a total membership of 65,000. I am going to make a few comments about the Ontario motorist protection plan and Linda Matthews will be commenting on Bill 68.

At the outset, the Ontario Chamber of Commerce commends the government for the comprehensive approach it has taken in the development of the plan by involving the Solicitor General (Mr Offer), the Attorney General (Mr Scott), the Minister of Transportation (Mr Wrye) and the Minister of Consumer and Commercial Relations (Mr Sorbara).

We agree that reducing accidents, in itself a praiseworthy objective, is the only real way to impact on the cost of insurance premiums. Our members, at their annual meeting in Sault Ste

Marie in May 1989, supported a resolution recommending that measures be taken to improve driver safety. We are pleased that the Ontario motorist protection plan outlines such initiatives, including increased fines for traffic offences, increased enforcement and better traffic management systems. We also welcome the emphasis on highway improvements.

The Ontario Chamber of Commerce sees this a wonderful opportunity to serve two goals: (1) highway improvement is an integral part of road safety and contributes to decreasing highway accidents; (2) improving the province's road transportation network assists the economic viability of many parts of our province. Our members' priorities are for a four-lane Trans-Canada Highway from Manitoba to Quebec and better bypass and arterial roads for the Metropolitan Toronto area.

Ontario government figures for 1987 show that six million drivers in the province had over 200,000 accidents that resulted in 121,000 reported injuries, among the highest injury-accident ratios in Canada, resulting in bodily injury claims costs of over \$1.8 billion in 1988. We are therefore pleased that the Ontario motorist protection plan recognizes that improved roads and safety will lessen the opportunities for accidents and reduce the strain on claims costs in the province.

Linda Matthews will now comment more specifically on the bill.

Mrs Matthews: The Ontario chamber has had a lengthy involvement with the auto insurance issue. We have met and made submissions to Dr Slater and Mr Justice Osborne's inquiry, as well as to successive ministers—I think three in the past four years—and parliamentary assistants in the Ministry of Financial Institutions.

Our objective, the need to contain the increase in the cost of automobile insurance premiums, has been consistent although, as you may well imagine, our membership has not been unanimous as to the best way to achieve this. But supported by our members at their annual meeting in 1986, and subsequently reaffirmed every year since then, we believe that changes to this tort system would have a substantial impact on premium costs by reducing the size of personal injury awards. Consequently, we recommended changes in the areas of prejudgement interest, structured settlements, double recovery from publicly funded programs and the awarding of damages for loss of care, guidance and companionship.

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We welcomed the February 1989 announcement by the Attorney General of initiatives in several of these areas and note that others are addressed in Bill 68. It appears, however, that tort reform alone will not have a sufficient impact on premium costs to address public concern.

Our July 1986 submission to the then Minister of Financial Institutions, the member for Wilson Heights (Mr Kwinter), observed: "If the tort system cannot be effectively reformed, then we would support a privately operated no-fault scheme. If such a scheme is introduced, we believe that great care must be taken to ensure that the costs of the universal compensation scheme are kept well under control." In this regard, our thrust was to ensure that the scheme remained in the private sector. We believe that Bill 68 provides for that and that it presents a reasonable compromise between premium affordability and benefit comprehensiveness.

We number among our membership both lawyers whose practices involve personal injury cases and insurance companies, but by far the majority of our members are consumers of automobile insurance.

We are familiar with and sympathetic to the objection to no-fault insurance on the grounds that it does curtail an individual's right to sue as a result of an automobile accident. We are also familiar with the insurance community's response to these objections and its documented inability to contain premium costs in the current system. We know that you are also familiar with this material and we do not intend to repeat those arguments here. Our members, for the most part, seek affordable automobile insurance premiums offering reasonable compensation in the event of an accident.

I also note in passing that those opposed to no-fault insurance do not appear to be suggesting that the current system or tort reform will successfully contain premium costs.

The guaranteed accident benefits of the Ontario motorist protection plan substantially improve on the current benefit level. The program also guarantees timelier payment. While the ability to sue will be curtailed and while some of the details of Bill 68 still need to be worked on, Bill 68 would put in place a system that gives every indication of being able to contain premium increases while improving both the timeliness of accessibility to and actual level of compensation for the majority of those involved in automobile accidents.

The Ontario chamber supports the plan and is particularly pleased that the government has left the delivery of insurance where it should be. We thank you for this opportunity to speak to you this afternoon. As Patrick indicated, our comments were brief. We would be pleased to entertain any questions.

Mr Ferraro: A minor point of clarification: On page 3, the presenters indicated that they welcomed the Attorney General's February 1989 announcement of initiatives in several of the respective areas. I just want to point out that those initiatives were embodied in Bill 69 and Bill 70 and indeed were passed last month.

Mr J. B. Nixon: Thank you very much for appearing before us. In your brief, you indicate that there is some diversity in your membership, that it includes trial litigation lawyers who are doing work for personally injured victims of automobile accidents, which raised in my mind the question, what sort of status does your presentation have? You are speaking on behalf of the chamber and have full authority to do so. That has probably been a debated issue.

Mrs Matthews: It has been in debate since 1986 at each of our annual conventions, where in fact the policy positions are determined. As I indicated in the remarks, the majority of our membership is in support. Our position, I guess, was really threefold all through this process: (1) very strongly, that we did not wish to see government insurance introduced; (2) that tort reform was our first priority, certainly initially, but (3) that if the cost justified support for a partial no-fault system, as our third prong, we would be supportive of that initiative as well.

Mr J. B. Nixon: We have heard some concerns from a variety of people about the adequacy of the compensation outlined in the regulations pursuant to Bill 68. I do not know whether you have had a chance to look at those regulations or not.

Mrs Matthews: You are referring to the \$450 a week, etc.

Mr J. B. Nixon: The \$450 a week, so far.

Mrs Matthews: My understanding is that in fact that figure represents 80 or 90 per cent of the wage earners in the province who would be compensated at an adequate level and that the provision of buying up would be available to those who are earning higher than that.

Mr J. B. Nixon: A lot of your members, I would expect, would be in that upper 10 or 20 per cent in terms of income. Have they voiced objections to you? Have they said they find that

problematic, the idea of having to buy additional coverage?

Mrs Matthews: I think perhaps I should ask Elaine, from the position of input directly to the chamber office, as to comments or concerns in that regard.

Mrs Rehor: Yes, it has certainly been debated, and debated in local chambers. First of all, I would question whether the majority of our members were in that upper-income level, but for those who are, I think generally it is accepted that they should not expect others to subsidize their premiums. While on an individual basis we all hate to see higher costs, I think in general terms, yes, they are not—

Mr J. B. Nixon: I think that is a valuable comment for the committee to hear. I appreciate it. Thank you very much.

Ms Oddie Munro: I am wondering if your members had raised the possibility that the no-fault aspect would result in an increased frequency of accident, which therefore implies that drivers would become less responsible and simply become worse drivers, therefore increasing accidents, because certainly the deterrent aspect of the protection plan, including the increased rates for bad drivers, would speak against that.

Mrs Matthews: I do not know whether Patrick, as chair of the current committee, would like to respond, but certainly when I chaired the committee over the last few years, we did discuss the suggestion that it would have an impact on accident rates. I believe the committee's feeling was that was not a valid or reasonable, rational kind of expectation.

Mr Cain: Yes. To add on to that, our current position is that a financial disincentive does not necessarily always indicate that you will take those bad drivers off the road, in the sense that they have to go to the Facility or whatever. We find the initiatives taken by the Ministry of the Solicitor General and the Ministry of Transportation very encouraging. The one that I would point to specifically is a revision of the demerit point system leading to earlier counselling and suspension, if that is required.

Certainly, if these plans are indeed put into place and they are effective, we are hoping that we can maintain a zero per cent increase in accident frequency, if not reduce that, and assist them that way.

Mr Velshi: I have just a comment rather than a question. The Consumers' Association of Canada came before us a few days ago. In fact,

they feel that we have not gone far enough; there should be no tort with the no-fault; it should be a pure no-fault. But they agreed with what we are doing as a government. You are doing the same thing here, and interestingly enough, the Ontario March of Dimes also did that.

I seem to get the vibes that we are at least on the right track. However, we have had people from other associations or organizations giving us some insight into their particular narrow focus, which we are also taking into account. At least I get a good feeling that the consumers of Ontario are not unhappy with this product. Am I right in saying that? Have you heard the Consumers' Association of Canada's presentation to us saying the same thing?

1450

Mrs Matthews: I knew that they were generally in support. I did not hear their presentation per se.

The Chair: Mr Kormos, five minutes.

Mr Kormos: Mr Velshi.

Mr Velshi: Oh, come on.

Mr Kormos: Mr Velshi, shame. The Consumers' Association of Canada advocated a government-run, pure no-fault system with no threshold, like the public system that the Liberals run in Quebec. Now, to suggest that the Consumers' Association of Canada endorsed this little scheme by the private insurance industry in Ontario is—well, it is more of the same pettifoggery.

Mr Velshi: What is pettifoggery?

Mr Kormos: What is pettifoggery? Holy zonkers. I will write it down for you later.

Mrs LeBourdais: Look it up in your Funk and Wagnalls.

Mr Kormos: That is right, or you can look it up in mine.

In any event, these people come here with some real concerns, and they, like so many others, have some uncertainties because the government has taken it upon itself to call this a no-fault system, and the last thing in the world is it a no-fault system. It has lots of faults with it and you have been hearing those day after day after day.

What these people are telling you is that they are tired of the proposition, like so many other people are, that they are going to subsidize drunk drivers. They are tired of the proposition that one of their membership could be struck down by a drunk driver in his Jaguar or Mercedes Benz, yet that victim—broken legs, broken back, fractured

skull—an innocent victim of a drunk driver is not entitled to receive one penny compensation—

Mrs Matthews: Did we say that?

Mr Kormos:—even from the wealthiest of perpetrators for pain and suffering and loss of enjoyment of life and, indeed, has to dip into his or her own banked sick days or disability days to once again compensate the drunk driver.

These people are telling you that this does not suit the interests of their membership. They have also been telling you that their membership is not that unique. There are a whole lot of other workers in Ontario who are in similar positions, who have to bank sick days, who have to pay for long-term disability plans in one way, shape or form. We told you of the example of the teacher many, many times. Again, every time we tried to illustrate to the government the shortcomings of this legislation, the examples were met with mockery. We talked about the teacher who was struck down by a drunk driver, who had broken legs as a result of being the victim of a drunk driver and who was forced to be off work as a result of that, who was forced to use up accumulated disability time.

Mr Ferraro: Peter, this is the chamber of commerce.

Mr Kormos: Okay, I thought it was the teachers. We will carry on with this brief. I was reading this brief.

The Chair: Wrong group.

Mr Kormos: Where are the teachers?

Mrs LeBourdais: They left already.

Mr Kormos: They left. I wanted to address the matter of the teachers, in any event—

The Chair: That is fine. You have another three minutes.

Mr Kormos: Thank you—who have accumulated sick time and who are forced to use that up before they are entitled to any benefits from an insurer. I will leave it at that.

The chamber brief, wow, is—

The Chair: You have two minutes for that.

Mr Kormos: I have two minutes for this one.

The Chair: They are in favour of it.

Mr Kormos: Oh.

The Chair: It is the standard, slanted group that is in favour of this bill.

Mr Kormos: Well, no, not the chamber. I am surprised. I wish Bob Runciman were here, because Bob Runciman would say, "I am surprised that you people would contradict the principles of free enterprise."

I want to tell you this, chamber of commerce, what this legislation does to entrepreneurs, to small business people. I was on the wrong illustration. I needed a small business person illustration that we talked about this morning and that we have talked about before, the entrepreneur who funnels most of his profits back into the business; the entrepreneur, once again, who suffers at the hand of a drunk driver; the entrepreneur who loses his or her business as a result of not being able to work in the shop or perform the service, goes bankrupt and then, let's say, takes five more years to return that business to the income capacity that it once had.

That entrepreneur will not receive a penny in compensation, let's say, at the hands of a drunk driver, and that entrepreneur having suffered, let's say, broken legs. There is not a penny of compensation for pain and suffering, not a penny in compensation for the bankrupt business, not a penny in compensation for the five years that it takes that business to be restored to the profitable position it was in before that person suffered at the hand of a drunk driver.

In view of that illustration, I have to ask how you can endorse this legislation so heartily.

Mrs Matthews: I think there are probably two points to counter what you are saying. One would be that a good entrepreneur would have medical coverage to look after his needs in case he fell down the stairs or had a heart attack or was in other medical circumstances that did not involve a car accident. The individual, I believe, would be covered. The other side of the coin is the affordability issue, and again, as good business people, they will want to be able to afford to carry automobile insurance.

One of the only ways of containing costs and premiums is to look at a new system, because the tort system, and certainly a government no-fault system, would not provide those opportunities.

Mrs LeBourdais: I just wanted to make the same point that Linda Matthews has just made, as a former entrepreneur—and I had an individual call me last night who is at present an entrepreneur—that regardless of the car insurance issue, anyone who is in business for himself has to protect himself with additional disability insurance, not because of a potential car accident, which is the lesser evil which might befall him, but any other kind of accident which would prevent him from carrying on business. Anyone with any sense at all would have to have disability insurance and be already paying that additional premium.

Mr Kormos: I have to respond to that. I hear what you are saying, but where I come from down in the Niagara Peninsula, and among the classes of young entrepreneurs and young professionals as well, many times there simply is not the cash flow to generate that. I appreciate what you are saying, "Well, in that case, their income will not be so great if there is not sufficient revenue to generate that cash flow."

I am talking about the interruption of business. I am talking about the fact that as a young entrepreneur, I or you or any other young entrepreneur should be able to look to the drunk driver, to the negligent party, for at least some of that compensation and should not have to subsidize that drunk driver by virtue of buying his or her own insurance. I see it as a subsidy for that drunk driver.

The Chair: I want to thank the Ontario Teachers' Federation, which is here in spirit, obviously, and the Ontario Chamber of Commerce, which is here in body, for their presentations and call on the Ontario Coalition of Senior Citizens' Organizations at this time.

Mr Frank: I hope there is no identity crisis here.

The Chair: I will resist the temptation to say that you do not look like a senior.

Mr Frank: Thank you. I am 73 years old.

The Chair: There is no such thing as a senior; there are just more mature people. We are in your hands for the next half-hour. Please introduce yourself and the persons in your delegation. You could probably take 15 minutes for your presentation—the clerk has distributed it—and allow 15 minutes for comments and questions.

1500

ONTARIO COALITION OF SENIOR CITIZENS' ORGANIZATIONS

Mrs Duenisch: My name is Reta Duenisch. I am the first vice-president of the Ontario Coalition of Senior Citizens' Organizations. Our president, Stan Sugarboard, expressed his regrets. He was unable to come.

We represent some 300,000 seniors in 26 organizations and we have been active since 1985. I wish to introduce Mark Frank, who will present some of our concerns. Mr Frank is an affiliate of our coalition from the retiree members of the Toronto Typographical Union, Local 91.

Mr Frank: May I share, at the outset, some preliminary impressions of these hearings as I have been seeing them, mercilessly, on TV and here.

The first of them is John Kruger, chairman of the Ontario Automobile Insurance Board, coming on like a man transformed from his austere courtroom hearings of last fall on classification rates, this time as a promoter of love and amity, championing the social merits and extolling the virtues of a for-all system of no-fault insurance and even critical at times of shortcomings of Bill 68, at pains to distance himself from the follies of Queen's Park and the insurance company crowd.

This was reinforced when he quoted and seized as his central opening remark the first finding of the OAIB report, which finds, coincidentally, first place in our submission, which had been drafted earlier, of course, so there was no collusion here.

Then we got the presence of Terry Kelaher and Allstate, the people who have the whole world in their hands and still want more, and my, my, so much concern for the fate of Ontario's long-suffering, innocent victims in the matter of rehabilitation and the virtues of one-on-one settlement with the insured.

Then, of course, there was a long line of insurance executives, and may I draw attention to the fact that some of us feel a little discriminated against in that we do not have so many outlets to come from and appear here before you, so there is an element of inequality that we note here.

Then, waiting in the wings, we had the lawyers of the Canadian Bar Association, a veritable band of angels, to relieve us of public myths and misconceptions that lawyers were a rum crowd and tolerated, at best, as a necessary evil—certainly a lot of saints in sight but nary a sinner here.

Then when Professor Carr came on yesterday, passionately telling us that it was irrelevant that \$400 million to \$500 million was being appropriated by the legal fraternity in advocacy fees, well, I do not think it is irrelevant at all and for him to profess that is something of a shock.

To proceed to our brief, let me say at the outset that while Chairman Kruger was correct to draw out the perception that insurance premiums are high in the country and in Ontario, there are other crisis-type perceptions, and incidentally, the relevant section of the report that he delivered on 14 July is not that there is the perception of high rates, there is in fact an affordability crisis, and I draw attention to the word "crisis."

That crisis feeling in Ontario is present in other areas. There are other areas in which that perception prevails, not only with regard to affordability, and I list them in the brief.

I will go through this brief. I will try not to read every single, blessed word here but simply strongly highlight what are our concerns.

I am stating here some general concerns which afflict car drivers in general, not just seniors and those who serve seniors, who are not always seniors: that benefits are miserly, a long time coming—you are familiar with these kinds of points, but I do not think you have been confronted sufficiently and forcefully enough with the concept that there is a sentiment, a perception, that there should be a system of publicly owned and operated car insurance and that this is not a foreign idea; and that a system of public, democratic controls be instituted internally in the system that is adopted and not appear always as plaintiffs and grievors from outside the system.

Let me go on to page 2, down to paragraph 4. The Ontario Coalition of Senior Citizens' Organizations believes the present Bill 68 falls far short of the expectations that Ontario car drivers truly deserve in any kind of reform of the insurance system and rejects the note of warning struck by the board's accountants about "unrealistic expectations" of consumers. Better that these experts direct their word of warning to those corporate providers of car insurance to limit their profligate profiteering in this area and their expectations of millions of dollars that would be realized through enactment of Bill 68.

The central point really is that, apart from legitimate complaints about rate benefits, the right to sue, administration and other shortcomings, the continuation of car insurance as a profit-driven, big-corporation-dominated industry undermines the realization of meaningful responses to the concerns listed above or the claimed desire of Queen's Park for enhanced benefits and lower premiums.

With regard to the no-fault question and a no-fault system, it is our view that a publicly owned and operated system offers greater possibilities for savings, efficiency, lower premiums, better benefits and democratic public control than the present system envisaged in Bill 68 and that if this were implemented, the costly and lengthy right to sue would be less in vogue in such a system, adding to its attractiveness.

We do not accept as inevitable the rise in litigation or the rise in resort to the courts. That is why we have pursued the idea of the right to sue, in such a system, as inviolable. The right to sue is one thing, but its implementation, in practice, is governed largely by all these other factors that I mentioned earlier. A publicly owned system

would militate against that and so would an internal, public, democratic control of the administration of such car insurance.

With regard to seniors very directly: Premiums. In two years flat, 1988 and 1989, seniors who live on fixed incomes have seen some increases of 17 per cent. That is without changes in the current plan. Bill 68 proposes to legitimize another eight per cent. It will be making driving too expensive for seniors. They will not be able to afford to drive, let alone those volunteers and other drivers serving the elderly. Is this what Queen's Park means when it urges seniors to be independent and mobile in their lifestyles?

It is getting to be costly for seniors now to ride the railroads. They will soon have to get back into those bad old days, not good old days, of the 1930s when we rode the rods, but let me suggest that the Via Rail cutbacks of routes and the Via Rail discount reduction from 30 per cent to 10 per cent are driving the elderly off the railroads into the cars. In turn, in the cars they are being driven off the highways.

What is left for seniors? I suppose airplanes, but they are expensive and they are not a form of transit that seniors look gladly upon, as all of you are aware. What is left? Buses are very inconvenient to seniors as well as to businessmen, so we are being driven out of our forms of transit.

1510

With regard to benefits, we are aware that \$185 a week will be forthcoming to a senior who is a victim in an accident. We know that is not indexed and that is not good, because we went through a big battle in 1985 on the deindexing of our pensions. That is how our coalition was born. We do not gladly look at forms of income that are not indexed these days, particularly those of us on fixed incomes. But we are puzzled by the fact that an employed person will receive \$450. He also has got a complaint because in our trade \$800 a week is not uncommon. I do not earn that; I am on a fixed income now.

We do not see the rationale of why \$185 was chosen to fix on the elderly or whoever, but particularly the elderly, because as far as the elderly are concerned, they face charges that are unusual in terms of home care and the kind of things that go with looking after older people when they are victims of an accident.

Not only that, they also in their income situations still have many of the costs that younger, employed people have. We still pay rent, we still pay taxes, we still pay all those costs that afflict consumers all down the line, and we

are going to be soaked with the goods and services tax as well. So we look at the benefit schedule somewhat askant and with some alarm and trepidation.

The right to sue: I have made my point about that. I believe we should not make sacred the right for lawyers to defend us as though that were a built-in occupation that they should have for eternity. We believe that should be reduced and we propose to take that route to our proposal.

No-fault: I have spoken on that, but we are very concerned here by dragged-out litigation and the special burden to the elderly that such constitutes, and the stress and strain of advocacy coming from professional lawyers, etc, as well as relatives.

With regard to new charges, seniors also get soaked whenever a budget comes down from the Ontario government, as it just did, in relation to questions like the registration and licence fees, the higher gasoline taxes and a new \$5 tire tax. Seniors get charged that, too.

Mr Runciman: Government has an insatiable appetite when it comes to taxes.

Mr Frank: We do not get any special discount for these increases. Together with car insurance rates steadily rising and the system of capping, which we do not believe is a cap at all and is in fact a system of imposing increases by little increments rather than a catastrophic 30 per cent to 35 per cent, you see this argument that if you do not take the eight per cent you are going to get the 35 per cent. No matter how thin you slice it, it still—you know that celebrated expression and I will not use it, in deference to the Chair's lecture this morning.

The Chair: Thank you. See, somebody was paying attention this morning. That is good to hear.

Mr Kormos: Can I say it?

The Chair: No.

Mr Frank: This kind of argument postpones the catastrophe. We should insist on the rollback. The touching concern about the 40,000 who work in the insurance system, that they are all going to be laid off, is really gripping because I wonder what the cabinet thinks about the free trade pact and the winding down of Via Rail. There was no outcry from the cabinet minister at the mass rally at Union Station that I attended the other day. There you have real layoffs and real thousands.

I think whatever the truth is about the number that would be laid off, this is a scare statement, and I am sure most of those would readily find

re-employment in the other branches, lucrative branches, of the insurance company.

There are negative impacts that I have tried to list in my brief here. I have drawn attention to the additional millions that are flowing as a windfall. These figures have been turning up in various places, they create a certain uneasiness among the car drivers in general and certainly among seniors who drive and are served by drivers.

We are worried about the kind of commission that is being set up. I have tried to suggest in my brief that we would like a system of a built-in level of consumer protection in the system, in any system, preferably a publicly owned system which would really reinforce that advocacy system that is built in, a monitoring system that is built up of consumers, car drivers, the disabled, the innocent accident victim, community organizations, the unions, to be part of an internal level that works for the improvement of the accident rate and that justice be served at another level before it gets to the courts.

The personal injury accident lawyers publicly acknowledge their own self-interest, and for the life of me I cannot understand how lawyers can put themselves forward in a Fair Action in Insurance Reform committee, a FAIR committee, and a People Against the Insurance Nightmare committee, a PAIN committee, defending the rights of innocent victims when these lawyers have a legacy of not being very fair and of creating a great deal of pain to their clients when the bill comes in. I find that a little peculiar.

In any case, my sense is that Bill 68 is going to be rammed through by some kind of mechanical majority that has come on lean, tough and mean and there are going to be some amendments; but I do not believe that tinkering with this bill is going to answer the questions that are alarming people out in the countryside. We are reaping quite a problem, a negative outcome for the government in power, if it is listening to that kind of advice.

The idea that insurance companies are going to do some avoidance tactics also threatens seniors. We are worried we are going to be shoved into higher rates of insurance in order to drive our cars as a result of arbitrary decisions. Now we are told that the commissioner will look after everything like that, but we are not convinced; we are disturbed by that, that this kind of licence to kill can be given to the insurance companies to arbitrarily shuffle off applicants for insurance to higher systems and the other type of high-risk insurance. Seniors are not high-risk drivers; they are very good drivers, as a matter of fact.

1520

Let me finally say this—and I will not summarize because you have it in front of you there—we often come across the argument that if you propose no-fault or public insurance you are an ideologue, you are an ideologist, you are this and that. It gets worse: They call you dirty names. But the truth of the matter is, we live under a system where there is OHIP, which is public ownership of health insurance, and we live under a system where we have a proven system of unemployment insurance. These were fought for by my generation, and we will not see these systems undermined. There is a lot of activity on that score, by various levels of government, to undermine the insurance systems that we now have, but we think it is time to move on to a civilized form of automobile insurance, and we think that is public insurance. We should not be bogged and we should not be raising this scare that this is ideological. There is nothing more ideological than the private insurance company racket. Can I use that word, Mr Chairman?

The Chair: Sure.

Mr Frank: It is extortionate and is an ideological, private enterprise set of values. We are challenging that set of values in relation to the provision of car insurance. We think that type of insurance has lived out its day, is obsolete and must give way to a new and higher form of car insurance.

The Chair: Thank you very much for your presentation. I would venture to say that most of the other organizations that have made presentations before us could not hold a light to your presentation in terms of insight and some of the wit that you have added to your brief.

Ms Oddie Munro: I would like to say that probably most of us around the table are not surprised at all that the coalition would come and make such an embracing presentation to us, because indeed you have done the same on many issues that have been before this government and the federal government. I agree with you certainly that the impact of the Via Rail cutbacks by the federal government, and also its imposition of the GST, will have an effect in general on the kinds of things we are able to do with our lives, but I would like to say thank you very much for once again coming at the call. Public participation is nothing more and nothing less than your participating, and we appreciate it.

I do not know if you are aware, and certainly I expect if you are not that you will be lobbying the

insurance companies, that Bill 68 does not prohibit them from lowering or bringing in lower rates for seniors. I do not know what their policy would be on fleet rates for the care givers, the visiting homemakers, etc, but Bill 68 certainly does not prohibit the lower rates. I should also say that I believe it is the case that the Canada pension plan and old age security are protected and that this holds even in terms of topping up any benefit that you might have or might be getting. You would not get less; at least, you would not be working into the universal moneys that you have fought so hard to obtain from the federal government.

We are all interested in your views on the Ontario Insurance Commission. I think that when it starts to operate, it will in fact provide you with a good deal of consumer information on regulation, on your right not to be dropped from a company, for example, and I was wondering if you had thought of those expanded benefits that you will get from the commission in that regard. Certainly there will be much more information available, and I think the benefit of what you have brought before us is that there is a lot of information right now that you want and that you insist on getting. I think that commission would be in a position to give it to you. From that point of view, I am wondering whether the consumer information that will come out of the regulations, out of the licensing, out of the dispute resolution mechanism that comes before the commission will be of benefit to seniors.

Mr Frank: Just to respond very briefly to that, the consumer information, or information in general, of course, is invaluable. I must tell you that it was a struggle to get information so that I could appear here. However, that is a story on its own. Yes, information, but the question that we are raising is, once you have that information, you have to have the levers within a system of car insurance, as within any publicly owned system of democratic controls and input, so that the information and the good regulations adopted can be monitored and can be fought for, so that they are properly implemented. We are calling for a level of input there.

Mr J. B. Nixon: I understand your concern and your suggestion that maybe people are even alarmed about the program that is being proposed by the government. I think some of that results from misinformation that is floating around, and perhaps I could just point out one example to you. You expressed concern about the level of income wage-loss replacement for seniors as being \$185 per week. That comes in regardless of

the Canada pension plan, old age security or any private pension plan. There is no offset there to reduce \$185, and you expressed concern about the \$185 being insufficient to purchase long-term attendant care or retrofit a home or anything like that.

I agree with you it is insufficient, but it is not intended to do that. The other benefits, the \$500,000 in long-term disability, is there for attendant care. The \$500,000 in medical and rehabilitation benefits is for things like retrofitting a home or buying an electric wheelchair or any of those types of things, so it was never intended that the \$185 income loss be directed towards those other rehabilitation and care services. You get both, is what I am saying.

Mr Kormos: I suppose it could have been worse. I could have walked in late on this submission and thought that the chamber of commerce was endorsing public auto insurance, and I would have called the revolution right then and there. I should indicate, I apologize to the chamber people and I thank the parliamentary assistant for, well after I was into my comments, mentioning that the teachers were off schedule, they had left earlier. I should have stuck with criticizing Mr Velshi for his misrepresentation of CAC.

Listen, you talk about a no-fault scheme, and you are not the only people, because the government has liked to call its scheme no-fault too because no-fault has some positive connotations for people. I mean, no-fault sounds like new, improved; it sounds like, you know, faster, smoother, a whole bunch of marketing phrases that we have been bombarded with most of our lives. But when you say "no-fault," the impression I am getting is that you mean there should be good no-fault benefits for everybody, plus the right for everybody who is injured to seek compensation from the negligent or guilty party. That is like the system they have out in British Columbia, where people have the right to sue if they have to go that far, because we know that most people do not have to go that far, that only three per cent of all claims end up in court. The vast majority are handled without going to court.

You are obviously addressing this. You raised the issue of seniors getting forced into this Facility Association. You seniors are probably the single group that is responsible for the government backing off back in February. Remember that new classification scheme and the new premium rates that were associated? Increases from 17 per cent to 80, 81, 82 per cent. But you seniors who got stuck with some of the

biggest increases mobilized and started raising hell so that the government backed off and dumped that multimillion-dollar project.

Mr Justice Osborne, a Supreme Court judge who also did the hearings back in 1987, and the general manager of the Facility Association both say exactly what you have said, that if this new insurance scheme gets passed, more and more people, including seniors, are going to be forced into the Facility Association because they do not have those income-replacement schemes available through their employer that, as we have heard from the police association earlier today, the insurance company could take advantage of. You talked about that. They are going to use avoidance techniques like they have been using.

I am amazed in the last year or year and a half at the number of senior citizens, good, careful drivers—because let's face it, many seniors do not drive a whole lot of miles every year; their driving is reduced from what it was before they retired—who are being told by their insurance companies, "Sorry, but we won't renew you when your renewal comes up next month or the month after." Then these senior citizens find themselves forced into Facility, where they pay \$2,000, \$3,000 or \$4,000 a year. It is just not in their budgets. As I see it, to a senior, his or her car can be the difference between being imprisoned in the house and being able to socialize and contribute.

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The one thing that is so important is that a whole lot of seniors I know, because they are retired now and they have the time, are also volunteers. It is the seniors who drive cancer victims from Welland and Thorold to Hamilton for their chemotherapy and then back. It is the seniors who take care of handicapped kids and the outings that these handicapped and disabled kids have in the summertime. The seniors have the luxury of retirement and the free time, and they want to contribute. But it is these same seniors, the volunteers, who will be forced out of their cars, forced into the imprisonment of their homes because of the Facility Association and exorbitant rates. Surely the prospect of that must be heartbreaking for so many of your people.

The Chair: Thank you very much for your presentation today.

From Cycle Watch, we have a presentation. I believe it is exhibit 30 and I think they have some additional material, so I would ask the clerk to circulate it. I would ask the individual making the presentation to identify himself and the individuals who are with his group. The committee is

yours for the next 15 minutes or so. We have your presentation. Proceed.

CYCLE WATCH

Mr Beiko: My name is Steve Beiko. I was one of the founding members of Cycle Watch. I have made my living as a bicycle courier for the last five years; as a taxi driver for 20 years before that. I am also a cycling educator through the Canadian Cycling Association's Can-Bike program.

Ms Sutherland: My name is Kate Sutherland. I am also a founding member of Cycle Watch, and I work as a consultant on environmental and urban design issues.

Mr Rabinovitch: My name is Jeff Rabinovitch. I am marketing manager for a packaged goods company. I have been with Cycle Watch for about a year now as a member at large.

Mr Beiko: Cycle Watch is an independent nonprofit organization that evolved out of the need for bicyclists to know how to deal with accidents, and we have chapters in Toronto and Ottawa.

For the last three years we have operated a hotline providing cyclists with information. We had numerous calls in the last few months asking about the impact of no-fault insurance. We then decided to investigate.

On 18 November 1989 we sent a letter to the Minister of Financial Institutions (Mr Elston). Copies have been circulated. Our position in the letter has been endorsed by the Ontario Cycling Association, the Toronto city cycling committee and Energy Probe, and copies of those letters are being circulated, I believe, at present.

First, Kate will discuss some of the details of the proposed legislation, about which we are concerned, and then I will follow with some broad issues.

Ms Sutherland: I would like to start by sketching the cycling population in Ontario, partly because we feel relatively invisible in the legislation as it is now before you.

We are a big group. Cycling is the second most popular physical activity in Ontario. It comes ahead of hockey, aerobics and swimming. It is second only to walking, which is an important physical activity but was not one that came to my mind.

Canadians, and presumably Ontarians, buy more bicycles each year than cars. Probably more Ontarians ride bicycles each year than drive. That is because kids ride bicycles but cannot drive yet. It is their main way of getting around.

The popularity of cycling is growing. There are people who are very concerned about the environment so they are turning to the bicycle for those reasons. There are people who are concerned about fitness. There are people who cannot afford to drive a car and therefore use a bicycle. There are also people who think that owning a mountain bike and wearing skin-tight spandex clothing is the thing to do.

So cycling is the fastest-growing sport in the country. It is a very major activity. It is one that has become sort of central to lifestyle advertising. Politicians have ridden bicycles in their promotional literature for years. That is why we feel it is very important that this legislation take into account the needs of cyclists, and it does not yet.

Our first concern with the bill is that it takes away rights from bicyclists without ensuring them access to benefits. This is because the proposed section 57 of the bill would remove the cyclist's right to sue for injuries below the threshold. In principle, they are entitled to no-fault benefits instead, but there is nothing in the bill which guarantees them no-fault benefits.

The description of "insured person" is in the regulation that accompanied the consultation draft. Cycle Watch is happy with that definition. We do not have a problem with the way "insured person" is defined, because it clearly includes a bicyclist. But we do not think it is fair that the provision that entitles a bicyclist to coverage under the no-fault scheme does not get equal status with the provisions that take away his rights to sue. It is a point of principle in a sense, but it is a key one for us. We think that there should be inclusion of "bicyclist" in the definition of "insured person" within the bill and not within the regulation, because we are not happy with the possibility of, at some other point, an arbitrary decision that bicyclists should not be covered, should not get access to benefits under the no-fault scheme.

Our greatest concern is our second concern. We mention it second because the issue of principle of whether bicyclists are included in this logically comes first, but our greatest concern is that a bicyclist can be sued but cannot sue under certain circumstances. I am speaking here of cases where the level of injuries is under the designated threshold.

Imagine the following scenario: A car hits and injures a cyclist, who hits and injures a pedestrian. Our first question was, can a cyclist or pedestrian sue the motorist for personal injury damages? And the answer is no. The bill says that

the owners or occupants of automobiles are not liable for the loss or damage for bodily injury arising "directly or indirectly from the use or operation of an automobile." The cyclist cannot sue the motorist, and neither can the pedestrian. We are speaking for cyclists, but at this stage we share the interest with pedestrians.

The second question we asked ourselves is, can the pedestrian sue the cyclist for personal injury? And here the answer is yes. The pedestrian can sue the cyclist for the share of her damages that are due to the cyclist's negligence, minus the amount of any no-fault benefits that she collects. The cyclist can be sued by the pedestrian but the cyclist cannot sue the motorist.

If Bill 68 is passed as is, it will take the average personal injury lawyer about 30 seconds to figure out where the deep pocket is. This is unfair to cyclists. It will discourage many people from riding bicycles. We do not believe it was ever the intention of the legislators to have such a negative impact on cyclists. We imagine that it is the result of an oversight. We really want you to do something about it. It is our biggest concern with the specifics of the legislation, and we would be happy to consult with you about possible solutions. It is not an easy one to solve.

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Our third concern is that car insurance rates should continue to deter bad driving. This is something we feel particularly as cyclists. We are out there more vulnerable to accidents than most other people using the road. When the Ontario government introduced the Ontario motorist protection plan it promised that rates would continue to deter bad driving. Nowhere in the bill, however, is there a description of the mechanisms that insurers must use for setting rates. This is another factor that is left to regulations, and even there there are not specific instructions to insurers.

Our concern is that under the no-fault scheme insurers will have little incentive to go beyond accident frequency as the basis for setting rates. This is because their payouts will not be affected by whether or not their clients are the ones at fault. It will be much simpler and much cheaper for them just to count accidents than have to investigate what happened.

Cycle Watch acknowledges that good drivers are defensive drivers who are therefore able to avoid accidents and for this reason it is appropriate that accident frequency be an important factor in rate determination, but the incidence of fault is a fairer and truer indication of poor driving habits, so we feel very strongly that it has to be

part of the rate determination process. Because insurers will have little incentive to do that, to include fault in their way of setting rates, we feel the bill must include provisions. We ask you to codify that fault, not just frequency, be at least part of the basis for setting rates.

Our fourth and last concern stems from the fact that many people who ride bicycles also drive cars. We are concerned about what no-fault might mean for cyclists' car insurance premiums. What the no-fault bill does is require that a cyclist turn first to her own insurer if she is in an accident. It does not matter who is at fault; that is your first line of recourse. Nothing we can find in the bill would prohibit the insurer from using the fact that a cyclist has claimed injuries arising from a car-bike accident as the basis for increasing car insurance rates that a cyclist pays.

This is a big change from the current situation where what you do on a bicycle has nothing to do with your car insurance premiums; they are two separate issues. What no-fault does is remove the cyclist's right to sue the car owner or driver and forces her to her own insurer instead. It does not provide a cyclist with third-party liability coverage and it means that cyclists who drive cars are open to a kind of double punishment, first, that they can be sued and are more likely to be sued—we mentioned that earlier—but also that their insurance rates might go up for something they did on their bicycle.

If the bill goes ahead as is, this becomes yet another strong reason for car owners and drivers not to ride bicycles. At a time when the Ontario government should be encouraging more people to explore alternatives to the private car, this is ludicrous in our view. It must be changed. We ask that you change the rating rules to expressly rule out the possibility that cyclists' car insurance premiums could be affected by their cycling activity.

These are concerns that cyclists have with the bill at what we call the microlevel. Cycle Watch has been supported by the Ontario Cycling Association, the Toronto city cycling committee and Energy Probe on these points.

Even if you make all the changes we are asking you to, these four problems that we have highlighted, we still think the bill should not go ahead. We see the bill as counterproductive and shortsighted even within its own terms of wanting to keep accident costs down. We cannot say too strongly that the only way of dealing effectively with the problems this bill is designed to address is by reducing Ontario's reliance on the private automobile. Steve will elaborate.

Mr Beiko: This bill is about not just automobile insurance rates but also transportation policy, whether it was intended or not. We are at a crossroads. We can continue to support the use of the private automobile or we can develop a sound transportation policy that encourages people to walk, to cycle and to use mass transit.

Rising automobile insurance costs are being treated as the problem when they are actually just a symptom. The problem is traffic congestion caused by overdependence on the private automobile. This congestion results in more atmospheric pollution, less efficiency, higher road maintenance costs and more accidents, in turn causing higher insurance costs.

Even on its own terms, Bill 68 is not a solution. By lowering insurance costs it creates more dependence on the private automobile, in turn causing more accidents, more congestion, more pollution and ultimately even more subsidies. An analogy to this situation is a store that is selling goods at a loss. If it sells more next year, it loses even more.

You have heard a lot about the three types of subsidies in this bill: the loss of the three per cent tax, the cost to OHIP of indirectly supporting automobile insurance and the cost to accident victims of receiving lower benefits. This has usually been presented as a subsidy to insurance companies. We see it as a subsidy to the private automobile, and getting back to the analogy, as more automobiles are on the road each of these subsidies will cost more and more going farther down the road, spending more money to support this.

Bad transportation policy drives out good transportation policy. Mass transit across the province would be more economically viable if more people used it instead of counting on the private automobile. Making it less difficult for people to afford to drive encourages malls on the fringes of cities and towns, hurting the small independent businesses that are within walking distance of where people live and work. This not only hurts the businesses, but results in deterioration of people's health from lack of exercise and from the sense of community that comes from walking along your street and meeting your neighbours.

Also, there are many citizens who are not served by our society's reliance on the private automobile: the elderly, children, people with disabilities and the economically disadvantaged. The last group includes those who do not have cars, as well as those who have cars but are financially entrapped by their dependence on the

cars. They need their cars to go to work and to shop because they do not have good alternatives, but they are up to their necks in debt, whether it is for purchasing the car, paying for repairs or paying for insurance; it all amounts to the same thing.

This government can be commended for its opposition to the shutting down of Via Rail. An acquaintance of mine was recently contracted by the federal government to speak in a number of northern United States cities encouraging people to use bicycles instead of cars because of the pollution spilling across the border. It boggles the mind that we continue to subsidize the automobile in spite of these two things. That subsidy money would be better spent on alternatives like walking, cycling and mass transit.

Mr Kormos: I first became aware of this impact of the legislation in an article by Glenn Cooly in *Now Magazine* last week, and your input was what constituted his understanding of this effect. Obviously nobody had addressed his mind to that and that betrays a myopia that permeates this Legislature and suggests what you say, which is that if nobody would address his mind to that, that meant nobody was mindful of the fact that, quite rightly, there are other ways of getting about than by car. In my view that betrays a lack of real commitment to alternative modes of transportation. Otherwise, peoples' mindsets would have been such that they would have assessed this legislation in terms of what you speak of.

Again, were cyclists but a handful of people, were they a cult in the city of Toronto, one might excuse that, but the fact is that cycling is, as you have explained it—anybody who is out on the street, be it on foot, on the TTC or in a car cannot help but notice that cycling is a pretty commonplace mode of getting around and perhaps, from your point of view, it should be more commonplace for a huge number of people.

I am sure the government now is extremely thankful to you. I am not sure you will get anything out of it. I am sure they will make appropriate amendments to the legislation.

My concern is that these people, having said what they said and their input being as valuable as it appears to be—what is going on here? Was this legislation so hastily prepared that defects have to be pointed out? This is not rinky-dink stuff. These people have pointed out a major lapse in the legislation.

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That leaves me to say that it is not good enough for you to assure us that this is the only one. I

have some real concerns now. In view of the history of this whole scenario, in view of the fact that Kruger looked at three options at the OAIB and basically did not endorse any of those three, and in view of the fact that this legislation came forward so rapidly after Kruger's basic rejection of all three options, are we to be left with the impression that this stuff was prepared on the proverbial weekend and is like the procrastinating student's final term essay, finally slapped together at the last moment, full of plagiarism and false quotes?

I have some real concerns and I would really be interested in hearing some candid analysis of the history of this legislation. I suspect it was hastily put together. I suspect the minister felt under a great deal of pressure to produce something, because after all he promised something and he would not have wanted to be cast in the same light as the Premier (Mr Peterson), who promised a plan to reduce auto insurance premiums back in 1987. This does not bode well for this legislation or for how it is perceived. I think we have a real white elephant, Mr Ferraro.

Ms Sutherland: I would like to say just two things in response to that. One is that we started to look at no-fault in the summer and read the big report. We were almost ready to comment when the consultation draft of the legislation came out. We thought that rather than wasting your time with our response—yes, that was read cover to cover by Cycle Watch volunteers.

Mr Kormos: And you survived it?

Ms Sutherland: There are two references, I believe, to bicyclists in that. The consultation draft came out before we had a chance to comment. We are a volunteer group. We meet on evenings and weekends. We have other things to do with our lives. We were about to comment on the consultation draft, which also had serious gaps for cyclists, and the actual legislation came out. So our sense is that this has been a very speedy and hasty process that has not allowed for the airing of potential problems.

Mr Kormos: I guess these committee hearings are really important then and it is a real shame that the government is shortening them and not letting as many people to make presentations as would like to.

Ms Sutherland: The other side, though, is that we had a hard time deciding where we would place the emphasis in our comments. We have these microconcerns with the actual details of the legislation, but by far our biggest concern is that we are in an environmental crisis. We all know

that the automobile is one of the leading causes of pollution. We all know that the automobile is not the way to go in terms of developing sound transportation policy that meets people's needs. We have got ourselves into a position where by some kind of inexorable logic we have the Los Angelization of the greater Toronto region, and of Peterborough, Huntsville and every town across Ontario and it is very hard to break the addiction, virtually, to the private automobile.

It is hard enough with all the hidden subsidies that are there now. What is really obscene is to be adding yet another subsidy, which is what this bill does. The whole debate has been on how what we are doing is subsidizing the insurance companies. The real issue is that we are removing the only thing that will cause us to check our continued reliance on the automobile, which is that it is too expensive. It is too expensive for society, too expensive for individuals and bad transportation policy is driving out good transportation policy. The longer we go on, the less easy it will be to implement a good transportation policy based on alternatives to the car.

Mr J. B. Nixon: I would like to thank you for appearing before the committee. One of the values, as I see it, of the committee hearings is that people like yourselves come forward and ask questions about the legislation.

You raised in paragraph 2 the adverse effect that it may have on bicyclists involved in accidents with cars. I would like to ask either the parliamentary assistant or staff to make a comment on that, on the relationship between insurance for cars and how it affects the right to compensation for or recovery by bicyclists who are involved in accidents with cars.

Mr Ferraro: I thank Mr Nixon for the question. Let me say first, to Cycle Watch, thank you for your presentation. Indeed it is a very perplexing problem, one that we did not rush into but one that we are actively dealing with. Ms Sutherland's comments about the fact that it is not an easy solution were very much appreciated and, quite frankly, evident.

I must acknowledge the fallibility of the government. We never said we were perfect, but I do assure you that we are working on it. The difficulty is—it is a perplexing problem, irrespective of changing the joint and several liability rules involved—how one comes out with fairness, if you will, given the different scenarios.

Not being a lawyer and without confusing the issue any further, I would like Mr Endicott to comment on that aspect of it.

Mr Endicott: Just for purposes of clarification, and this actually comes back to a discussion we had before, this is an aspect of the joint and several liability rule. The purpose of the threshold scheme is to apply to owners and operators of automobiles, as they are the ones who are paying the insurance.

As we discussed before, there are a number of other potential contributors to the liability, if you like, in an accident and the other examples we dealt with before were tavern owners and municipalities for nonrepair. To a certain extent, in that scheme of things, the cyclists do fall into that same category. Of course if they were sued they would also benefit from the restrictions on the joint and several liability rules in the sense that they would be held accountable for only that proportion of the negligence that they would be responsible for, which is the case as well under the current system.

I guess that once again the problem is that it is dealing with automobile accidents. In a technical sense you are not really affecting a number of other relationships on the road. For example, when a cyclist hits a pedestrian and it does not involve a car, what do you do in that circumstance? That is not within the scheme of this particular law.

Ms Sutherland: In the current system the cyclist is not the deep pocket. The cyclists can be sued, but they are not the ones who are likely to be sued. You can say that it is not fair. If what you do out of this impasse is include the cyclist and basically exempt him from suit by including him under the no-fault scheme and say, "No, you cannot sue a cyclist," you can either require cyclists to carry insurance and include them in the no-fault scheme, which we would argue against because the number of people who bicycle three or four times a year—

Mr Ferraro: That is the easy solution from our perspective.

Ms Sutherland: Yes, but it is a real problem just to administer and because so many people cycle so seldom and because it would be such a disincentive to bicycling.

By including cyclists under the no-fault insurance benefit scheme, basically making them so that they cannot be sued, is what we would lean towards. The problem for bicyclists is that they have to share the road with these things that weigh 4,000 tons and go around and make it so dangerous. The reason you have compulsory insurance coverage is basically because automobiles are very dangerous things to have people winging around in with at 40, 50 or 60 miles an

hour. If bicycles were the main mode of transportation there would not be a need for compulsory insurance because you are self-insured. You are not going to damage somebody else.

If you include them under the no-fault scheme it still leaves the situation you highlighted, which is where a cyclist hits a pedestrian with no motor vehicle involved; that is the same as now. We do not have any problem with that. We actually think that is good because we want to encourage cyclists to cycle well and they should be responsible for the consequences of their accidents.

Mr Endicott: I guess the point on that is that it is difficult in terms of designing the system to accomplish that end, because you do have a sort of interrelationship with the automobile in some circumstances and not in others, or just between bicycles.

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Mr Beiko: There seems to be a problem, though, with lumping cyclists together with tavern owners in that they usually do carry liability insurance. Legally they may be similar, but in practical terms, a tavern owner would normally have liability insurance.

Second, when a tavern owner is partly responsible for an accident, it is usually a pretty big part. It is, in most cases, for allowing clients who are known to be driving to consume a great deal of alcohol and cause a great deal of damage, compared to what a bicycle causes. It is closer to a business expense.

Mr J. B. Nixon: Under the proposed insurance scheme, as you understand it, the cyclist would retain the right to sue anyone who was involved in an accident with that cyclist?

Ms Sutherland: No.

Mr J. B. Nixon: If a car hits you now, you sue them.

Ms Sutherland: Now.

Mr Endicott: Now.

Mr J. B. Nixon: And under the proposed scheme, if you are hit by a car?

Ms Sutherland: But they are partially a cause of it.

Mr J. B. Nixon: Let me get this straight. Are cyclists covered? Will they buy this insurance?

Mr Endicott: They are covered, of course, with the no-fault benefits. They are always entitled to that in any accident involving an automobile.

Mr Ferraro: With an automobile.

Mr Endicott: Regardless of whether they caused it.

Mr J. B. Nixon: Okay, under the new insurance program, if the cyclist is hit by a car, can the cyclist sue?

Mr Ferraro: If they pass the threshold.

Mr J. B. Nixon: If they pass the threshold.

Mr Ferraro: They are automatically covered under the automobile insurance.

Mr J. B. Nixon: If they have bought it.

Mr Ferraro: No.

Mr Velshi: If the pedestrian is covered, the cyclist is covered.

The Chair: For clarification, and this might help a bit, if the cyclist does not own an automobile and is struck by a car, can he still have access to the no-fault benefits?

Mr Ferraro: Yes, he can. The insurance of the car driver, making that assumption, would cover the cyclist.

Mr Beiko: Is this in the bill itself or the regulations?

Mr Ferraro: The entitlement to the no-fault benefits is in the bill.

Ms Sutherland: The definition of a bicyclist as an insured person is not in the bill. That was our first point, which is that the bill removes the cyclist's right to sue, but does not, in the bill itself, with the same status, accord the cyclist the right to benefits. The definition of insured person is in the regulations. We do not think that is fair.

The Chair: Okay, did that help?

Mr J. B. Nixon: Or is there further comment?

Mr Ferraro: It is my understanding, and Mr Endicott can correct me, that you are right. It does not distinguish between an individual and a cyclist. But I guess—Mr Endicott, you can clarify it for me if I am wrong—that would not necessarily preclude cyclists.

Mr Beiko: It leaves it open to a court case, rather than clear.

Mr Ferraro: I think it is fairly clear now. Mr Endicott, do you—

Mr Endicott: It is clear. You are correct there. It does rely on a definition of "insured" in the no-fault benefit schedule and, as currently drafted and circulated, that would without question include cyclists.

Ms Sutherland: But that is not in the bill.

Mr Beiko: The regulations can be changed without public process and without another hearing like this.

Mr Ferraro: Then there is a positive side to that.

Mr Beiko: In this instance?

Mr Ferraro: Expediency.

Ms Sutherland: We just do not think it is fair that a major road user—

Mr Ferraro: I understand the point you are making. Would you feel more secure if it were in the statute, as opposed to the regulation?

Ms Sutherland: Yes, it is a principle thing on the one hand, but it is also as if we were invisible and I do not think we should be. We are not invisible. Bicycling is a major activity.

Mr J. B. Nixon: You have made yourselves very visible today. You have made some good points. I just want to say thank you.

Ms Sutherland: I do not know if anybody does not have a copy of this.

The Chair: I think it was circulated. That was part of our exhibit 30. Is that the letter dated 18 November?

Ms Sutherland: Yes.

The Chair: We have a copy of that.

Mr Ferraro: Mr Chairman, could I just say to the delegation that hopefully we will have many of these points clarified in the next few weeks, and I will make a point of making sure Cycle Watch gets any and all copies of that.

Ms Sutherland: Can we also say that those are our micropoints, and that our macropoints matter more to us?

Mr Ferraro: The environmental concerns, and so forth. I appreciate those as well. Thank you.

The Chair: Mr Seigel, the clerk is circulating or has circulated your submission. We have allocated 15 minutes. I would suggest that, if possible, you use anywhere from seven or eight for your presentation and then allow for some questions, discussion and dialogue. We are yours for the next 15 minutes.

JOHN SEIGEL

Mr Seigel: Thank you for allowing me to speak to you today.

The Minister of Financial Institutions (Mr Elston) has stated that the Ontario motorist protection plan will achieve balance between affordable insurance rates and appropriate benefit levels. I am here today to speak on behalf of my clients who own and operate small businesses. I am a chartered accountant and a partner in a national and international accounting firm. The bulk of our client base are profes-

sionals and small businesses. In my view, the proposed plan will neither provide adequate protection for these individuals nor save them premium dollars.

I should point out that we are talking about a very sizeable group of people. The Canadian Federation of Independent Business estimates that there are currently about 600,000 small businesses in Ontario, not to mention about 100,000 self-employed professionals. My comments are equally applicable to both. We can all appreciate the importance of this economic group to the economy of Ontario.

The owner-manager earns his or her livelihood from personal skill and acumen, an enormous investment of time and, usually, a not insignificant investment of money. If any or all these inputs are diminished or lost to the business, even for a period of time, the enterprise will most likely fail. It is therefore imperative that these energies be protected and that these individuals be insured.

Under the present system an owner-manager who is the innocent victim of a motor vehicle accident can sue for the following: loss of profits, which may reflect or be the result of one or both of diminished sales and increased expenses, such as the cost of hiring people to do physical work or to replace services that cannot be rendered by the manager; loss of future profits resulting from lower sales levels, slower growth or increased expenses; loss of investment if, for example, the business fails, and of course damages for pain and suffering.

Clearly, an appropriate award of damages would be available to restore this person to the financial position he or she would have enjoyed had the accident not occurred. Under the proposed system recovery would, under most circumstances, be limited to a weekly income benefit. Who will compensate the injured party for lost profit, lost goodwill and possibly the loss of the business itself?

To qualify to receive any weekly income benefits, the injured person must suffer a "substantial inability to perform the essential tasks of his or her occupation or employment". An owner-manager usually carries out a wide variety of tasks and may work 70 to 100 hours per week in the normal course. If such an individual is injured and is then able to wear only three hats instead of six and work only 40 hours instead of 80, will he or she be denied benefits? The reality is that the injured owner-manager may have only one choice: go to work or close the business.

The maximum weekly income benefit is the lesser of \$450 or 80 per cent of the insured person's gross weekly income. I can anticipate that some businessmen may have difficulty proving that they have been earning \$563 per week gross in order to qualify for the maximum benefit of \$450. This difficulty may be due to a lack of profits in a startup business, below-average profits in the previous 12 months due to unusual economic conditions or other nonrecurring events. Who will compensate these individuals for the fact that earnings may subsequently have improved?

In the case of a successful business, the \$450 weekly income benefit could represent but a small portion of actual income and the owner-manager would be required to purchase additional disability insurance to maintain that income, or at least a portion of it because it cannot all be replaced, even by layers of insurance, if he or she could qualify in the first place. Such cost, in addition to the eight per cent increase anticipated, will certainly not result in lower premiums.

I am also concerned that these benefits are not indexed to inflation. At the present five per cent rate of inflation these benefits will be halved each 14 years.

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If an owner-manager attempts to mitigate his or her losses by hiring additional staff to perform duties, which he or she would have otherwise performed, who will compensate for such outlays? If sales diminish or do not grow as expected or the business fails due to the inability of the owner to manage, who will compensate? It is conceivable that an injured owner-manager could lose not only his or her livelihood, but his or her life savings as well.

I should say that I support many of the elements of the proposed program: the increased no-fault benefits certainly, a speedy delivery of benefits, elimination of double recoveries and elimination of tax gross-ups through the use of structured settlements. These will certainly prove cost beneficial to the industry, and I support them.

But it is my submission to you that the proposed verbal threshold, the inability to sue, will introduce an additional and unacceptable risk factor to the small business sector. The only way an innocent victim of a motor vehicle accident can be made whole again is through the courts.

The laws of the land protect the small businessman from improper actions by landlords, suppliers, customers and even partners.

Various types of insurance provide indemnification against losses due to fire, theft and dishonest employees. The proposed system will strip away important financial protection currently provided by the courts. Thank you for your attention.

The Chair: Thank you. I have Mr Kormos and Mrs LeBourdais. Mr Kormos, four minutes.

Mr Kormos: You were not here, nor was I, when the Ontario Chamber of Commerce made its submission speaking on behalf of a membership of 65,000 people, 165 member chambers of commerce and boards of trade. First, I lectured them about how the bill was going to impact on teachers and then I pointed out to them how small business people were going to have the rug pulled out from underneath them.

The entrepreneur you speak of here—and again, we have to be careful because when some representatives of small business people talk about small businesses, they mean small businesses. We are talking about small businesses. We are talking about the entrepreneur whose family inevitably helps out in one way, shape or form. We are talking about a person who could be driven into bankruptcy.

I am referring to an illustration that has been used in the Legislature to explain to the minister and to the Liberal members of this committee how bad this legislation is when it comes to small business people: A person whose real revenue is not reflected as income because so much of it is turned back into the business—it is not drawn out as income and is disguised or hidden in any number of ways; a person who could well be forced into bankruptcy; a person who could well have the perseverance to get back to work and rebuild that business, but for whom it might take four or five years to raise it back to the level of productivity that it was.

Again, an innocent victim—and I said this but moments ago—of, let's say, a drunk driver with broken legs, broken back, fractured skull, these are all injuries that do not pass the threshold so that person is not going to get any compensation for pain and suffering, not a penny, notwithstanding that he was innocent. He did not do a single thing wrong, was doing everything right and did not plan for a drunk driver to go through a red light or a stop sign and drive him down, but the drunk did.

Not only will he not be compensated for what could be incredible pain and suffering, but he will not be compensated for the loss of his business, the bankruptcy, will not be compensated for the years of diminished income that it takes to build that business back up to what it otherwise

was; but he will, it will be pointed out to you, be entitled to so-called no-fault benefits, which we have now, for which he cannot seek the difference between what the no-faults are, this maximum \$450, and what his real losses are, even when the drunk who drove him down did it in a Mercedes Benz or a Jaguar or an \$85,000 Porsche.

Add to that the impact of this legislation on people who use vehicles as a part of their business, from a taxicab owner-operator to the business person who uses a vehicle to travel to and from customers or clients' homes—

The Chair: One minute.

Mr Kormos: Thank you—this legislation is not going to reduce premiums. Premiums are going to continue to rise. We have been told that by, among others, the Ontario Automobile Insurance Board. Premiums are going to continue to rise. The cost of keeping a vehicle on the road is going to continue to be unconscionable for small business people all across Ontario. This bill does not do anything to address the needs of small business. Why would the chamber of commerce be at such variance with what you have to say here today?

Mr Seigel: I do not know. I did not hear their comments. I would be interested to hear them.

Mrs LeBourdais: In all fairness to Jaguar and Mercedes drivers, I do not think we should all assume that if you are able to afford that kind of a car, you also drink and drive. I think the Chevy pickup driver may be just as open to that claim as the Jaguar or Mercedes driver.

Mr Kormos: But a lot poorer than the Jaguar or Mercedes drunk.

Mrs LeBourdais: I know you were not here earlier this afternoon, but I think the point was made by Linda Matthews, president of the Ontario Chamber of Commerce, as well as myself, that the individual entrepreneurs that you outline and that you have as customers would no doubt have to buy additional premium insurance, since I would assume that most would be in excess of the \$30,000 limit.

However, I think it is implicit that those people would have to have or would be wise to have some sort of disability insurance, not just to cover them for the possibility of a car crash but for any other kind of accident that would prevent them from carrying on business. By having it, they would have additional coverage in case of a car accident. But surely, to protect their incomes and to look after their families and to keep the business going, as you suggest, they would really

have to have the dollars to make payments for disability insurance if they were going to carry on business at all. It is one of the expenses that I think would have to be mandatory in order to keep it in business.

Mr Seigel: I can answer that. Certainly, we recommend to our clients that they protect themselves through disability insurance. I would suggest, though, that the ones who have disability insurance, and when disability insurance becomes primary to the auto benefits those who have the disability insurance will be paying the full cost of an automobile policy and really receiving no benefit in that regard because they will not collect.

I would also suggest to you that you still cannot protect your entire income even with layers of protection. Also, many small businessmen will have difficulty for the reasons I have outlined, either for health reasons or for business record reasons or because the business is early on, in obtaining enough insurance to protect themselves. You also are aware, I am sure, that as you become older it becomes prohibitively expensive. None of that will protect and safeguard the loss of profits, the cost of extra help to try to keep the business going or, if the business fails, the loss of your investment.

The small business sector in this province is being bombarded every day with competition: the rigours of day-to-day competition with additional taxes, for instance, the health premium tax, which is a blow to many, the downtown tax, the concentration tax, which has cost a number of our clients a lot of money or will cost them a lot of money this year. This just adds another risk to being in your own business and, in my view, it is of great concern.

Mr J. B. Nixon: I just want to mention to you that the Canadian Federation of Independent Business was in, I believe it was yesterday, expressing general support for a no-fault program as the government has outlined but raising the very same specific concern that you have raised today. I think it is valuable that you have raised it because it gives something for the ministry to consider when it drafts the regulations, to deal with business loss as business interruption.

Having said that, my question is very much along the lines of Mrs LeBourdais's. I recognize that there are all varieties of insurance, and I am just going to ask you about another variety as opposed to disability. What about business interruption and business loss insurance? Does a

reasonable entrepreneur or sole proprietor or small firm not buy that type of insurance?

Mr Seigel: Sure, but that only protects you against fire and those types of things. Business interruption insurance, as I understand it, will not protect against an injury of the key employee. It just does not cover it. If you are closed because of fire or damage or earthquake or if somebody drives a car into your premises, certainly that is covered by business interruption insurance.

1620

Mr J. B. Nixon: Okay, I did not realize that. What about key personnel?

Mr Seigel: Key man insurance is life insurance, which is strictly life insurance.

Mr J. B. Nixon: So really it becomes that disability insurance is what you would look to rather than key man insurance or business interruption insurance.

Mr Seigel: Disability insurance for what purpose?

Mr J. B. Nixon: In the case that there was an automobile accident and whatever was available under the auto insurance policy was insufficient for compensation.

Mr Seigel: Yes, hopefully, at least to protect part of the income, and this is the income only. The individual might have additional layers of disability or private disability insurance to exceed \$450, but in my view that only protects a very limited part of what is at risk in the small business.

The Chair: Thank you very much for your presentation.

Next we have Mr Pileggi. I believe it is exhibit 69. The clerk is distributing copies. We are yours for the next 15 minutes. If you take seven or eight minutes to go through your presentation and allow some time for questions and answers, we would appreciate it. Please proceed.

JOSEPH PILEGGI

Mr Pileggi: First, I would like to thank you for a hearing. My name is Joe Pileggi. I work for Ken Howie down at the law firm of Thomson, Rogers. I am not a lawyer; I am what is referred to as a law clerk. I have a degree from the University of Toronto in economics and what I do is specialize in the economic losses where people get hurt in accidents. I want to be very specific about this because this is the reason I am here.

I see people who have been badly injured in accidents and who are beyond the threshold; for example, quadriplegics, paraplegics, amputees.

One of the things I am proud of is that War Amputations of Canada usually refer to myself and Mr Howie the young kids who are badly injured, the child amputee program, etc. Of the cases we get, 75 per cent of them come in from other lawyers. It can be airplane crashes, train derailments, product liability, all these various types of problems where people get hurt. When you read about cases where someone has been badly hurt, putting the cases together as to, say, the quantification of the losses is my involvement.

Whether you listen to the lawyers or whether you listen to the insurance companies, we are really dealing with one very simple fact, and that is the people who get hurt in these cases and what is the best thing to do to make sure they are taken care of. If I am dealing with a case where someone has been rendered a quadriplegic, I have a very simple problem: making sure that by the time the case gets to court moneys are being paid to him.

I applaud its being suggested that the no-fault schedule be increased. When the no-faults were first introduced back in 1972—this is well before my time; I think I was still in grade 12 or something—the idea of no-faults was to make sure that people would be given money at an early stage so they did not have to go on welfare. They increased it in 1977 and really we have not seen anything since then. Now we are talking about increasing the \$25,000 to \$500,000, plus \$500,000, plus \$450 per week for the lost-income provisions.

Before I go too far with the no-faults, let me just jump on the one very simple thing, and that is the threshold. I had a friend who is the chief psychologist at the Hugh MacMillan Medical Centre. As I mentioned to you, I see a lot of kids who have been badly hurt in accidents; 50 per cent of the children right now in the Hugh MacMillan centre, which is what we used to call the Ontario Crippled Children's Centre, have head injuries.

I am faced with two dilemmas. If a parent first comes in and says, "My kid is hurt; he is in a coma; he is at Sick Kids; he is going to be transferring to the Hugh MacMillan centre. What do I do? Who is going to do what?" either that kid is going to get 100 per cent better or he is going to stay brain-damaged.

One of the things about the children's cases, though—and let's say it is because they are young, they are going to get better—if the child gets better and he does not have any economic losses, the problem I have with the threshold is,

how do you protect the kids? I am not talking about the adults; I am just talking about the kids.

I have seen the worst things, and I would never wish it on anyone to have to go through it and I would not want to wish anybody to have to come into my office so that I have to work on his case. There is nothing worse for a parent than to have a kid who is hurt. Usually what they look for is for help, but under the threshold system right now I do not know what you tell the kids. They do not receive money for the injury; they do not receive money for economic loss, because they do not have any. That is the first thing I would like to talk to you about. Mind you, I guess I have finished on that one.

The second thing I would like to talk to you about is this, and again I am speaking about people who have been very badly injured in accidents: I do not think I have ever been involved in a case, and if I have there is maybe one and it is the exception to the rule, but in every single case where someone has been very badly hurt and he makes application for no-fault benefits, I have never been involved in a case whereby the benefits have been paid within the 30 days, as noted in the regulations, and I have never been involved in a case yet where someone is badly hurt where the insurer, whether it be a liability insurer and/or the contract insurer, has not looked to deny benefit coverage.

As soon as the policy, for whatever reason, is denied, it is a disaster. Unless the kid or whoever is hurt has the parental help, the parents to give him that support, it is a disaster. Right now I have got maybe about 150 severe brain damage cases, 30 or 40 quadriplegic or paraplegic cases and maybe about 20 amputee cases on the go. But in every one of those cases, I can point to you problems in the present no-fault system whereby benefits are denied, not paid, etc., and I am going to go a step further with you. Under the new no-fault regulations, all the same problems, all the same exclusions are there in the policy. I do not mind your increasing the benefits, but what I do mind is that they are not getting to the people.

On the alternative dispute resolution system, I know what the thought is. Think of it this way: Here you are, you want to set up a system whereby we are going to eliminate the rights of people to seek the protection of the court, or however you want to say it, but we are going to provide them with this benefit structure. As soon as those benefits are denied, for whatever the reason, okay, fine, we have the alternative dispute resolution system.

That alternative dispute resolution system is almost exactly the same as the problems that someone has when he has to go to the court. The time is almost exactly the same. The court process which tries to deal with no-fault cases pushes them through. The alternative dispute resolution system reinvents the wheel.

I do not know how you want me to present this, but this is my own compilation of no-fault cases whereby insurance companies, for whatever the reason, for every single part of the policy, by way of interpretation, etc., have denied benefits.

Let me go a little further with you. This is one of the worst things. We have Bob here, and there were a few other people who were supposed to show up, in particular Wendy Crawford. Wendy was a young model who was severely injured in a motor vehicle accident and Wendy went and helped out the Attorney General's office by flying around the province saying: "Look, I have been rendered a quadriplegic by a fellow who had been drinking and driving. Don't drink and drive." For the time that she went out to help, her benefits were cut off.

Each single person who is badly hurt has the sword of Damocles hanging over his head for the denial of the benefits. Why? Because when you take the two-year limitation that is in the present no-fault system, which says there is a new test of not getting your benefits, or you take the new system where they are going to pay you \$450 a week, there is always a problem with respect to nonpayment. What is it? If I take Wendy or if I take someone who is very badly hurt and I put that person on the street corner and have him or her sell pencils, does that mean that person is employable? The literal interpretation is that yes, that person is working; whammo, the benefits are cut off.

1630

This is a very nice lady. I do not know if you will want to see this. She was involved in an accident and she was nine months pregnant at the time. They were rear-ended on the Gardiner Expressway; the car blew up, her husband was killed and she suffered terrible burns. She certainly would meet the test with respect to disfigurement, and in fact I am going to say to you that I do not think I have seen too many people more badly disfigured. Her benefits were not paid. How come? If you take the literal interpretation of the way of cutting off these people, it is pretty bad, and it is not isolated.

The alternative dispute system which the government is proposing has been set up, but what I am going to suggest to you is the reason for

nonpayment of the benefits by the insurers. Mr Justice Osborne said that nonpayment of the benefits is abysmal. I tell you, he is understating it; you do not know how bad it is. It is in every case, and we are just talking about passengers in cars where the insurer of the vehicle they are in denies them coverage and then their own insurer denies them coverage.

There is a kid here by the name of Paul. Paul has got so much steel in him that when he goes into an airport he sets off the alarms. He cannot work. He was a passenger in a car. The car insurer says, "No way, we do not have to pay you no-fault benefits; there is an issue of consent in coverage." But under the provisions of his own policy he can go back and say to his insurance company, "Please pay my benefits." They do not do that.

One of the things you have done in Bill 68 is to say to the insurer and to, say, a father, "We will allow you to write a policy and exclude certain drivers in your car from coverage." If daddy lets Johnny drive or if Johnny, for whatever reason, takes the car and he should not, that exclusion pretty well nails everybody. It is almost a situation where, whether it be Mr Nixon or yourself, you have got a friend who is getting divorced from his wife, the insurer has now precluded the husband or the ex-husband from driving the car and no one has told you, "No benefits, no coverage."

What I am going to suggest to you is kind of simple. I deal with this all the time. I am paid not by the body, I am paid by the hour, I guess you could say, and I am going to continue to be busy because people are going to continue to get hurt and insurers are going to continue to not pay benefits. My suggestion is this. I have put together what I believe are solutions. You are going to get all types of people showing up here telling you, "Hey, this is wrong and this is wrong and this is wrong."

I think some of the solutions that I have suggested can fix up the problems. I want to approach it this way. I want to help, and I think we can do some good for the people who get badly hurt, but if I have to keep arguing with insurers, even five years from now, that someone like Wendy or Paul Mantel, etc have the right to receive moneys and it is not being paid, we are just wasting our time. That is pretty well it.

Mr Kormos: It is the end for these hearings today. I have to tell you, I lost my temper once again with insurers this morning. Gore Mutual was in here along with a whole bunch—I mean, just the last in a succession of them. These sons

of bitches walk in here and make like the whole past has been erased and like all sins will be forgiven, and from now on they sort of half concede that maybe they have not been quite as responsible as they ought to have been about paying those no-faults, let's say, or about—I have never done this sort of stuff, personal injury work and so on, so I do not know a whole lot about it. But we do know that only three per cent of personal injury claims end up in court.

Mr Pileggi: At the most.

Mr Kormos: As often as not, it is because, once again, the insurance company is denying liability and looking for ways to avoid liability or trying to skewer the plaintiff or victim and say that he or she is being less than honest about the extent of his or her injuries or the extent of the compensation. I will ask you to comment. You see, I only have five minutes and I have to use up some of it and I know you will remember that.

Mr Pileggi: Okay.

Mr Kormos: But my impression is that there is nothing to let the people of Ontario, least of all myself, believe that the leopard has changed its spots. There is no more incentive now for insurance companies to all of a sudden acquire some sort of—I mean, their tapes have not been rewritten. They are not going to start acquiring a sense of charity, generosity and largess by virtue of this new legislation. My impression of the legislation is that it is designed to make them fatter, wealthier and more prosperous. My impression is the fatter, wealthier and more prosperous people become, the shorter their arms get and the deeper their pockets get.

You say Ms Crawford's benefits were cut off because she was deemed to be somehow working or employed. Is that the impression that—

Mr Pileggi: Sure. At the Attorney General's office, going to the schools and saying, "Hey, I am a product of a drunk driver."

Mr Kormos: Then I will not apologize for calling them sons of bitches, Mr Chairman.

The comment that is made so often and the propaganda—the tens and tens of thousands of dollars that were spent yesterday morning by the insurance industry, drivers' premiums, purportedly telling the world fact versus fiction because they are hungry. They want this bill to go through so bloody badly they can taste it. They would come close to doing some illegal acts, I bet—at least they have thought of it—to get this legislation passed.

This whole business about lawyers dragging cases out, I hear this all the time. Yet the little bit

I know about practising law is that the sooner you close your file, the sooner you get paid. The impression I get is that the insurance companies would like to see things dealt with really fast because they end up paying out less.

Mr Pileggi: Let me explain something to you, because I am not a lawyer and I do not like a lot of things I see. One of the things I cannot understand, and this legislation is not going to change it, is when I have someone in a wheelchair or someone with brain damage and the insurer only has a \$200,000 policy—that is it, \$200,000 for the rest of his life, or a \$500,000 policy or a \$1-million policy—why it does not pay it.

Let me tell you why it does not: Because there is absolutely nothing to force the insurer to pay any money out of that policy until there is a judgement. Until there is a judgement, the insurer sits on the policy and collects the interest. That is not right.

I cannot understand how people think this is like Wintario; you know, "Let's throw ourselves in front of cars" or "Let's jump out of buildings" or something."

Mr Kormos: That is what the government calls it, a lottery.

Mr Pileggi: Yes, but whether you say it is or it is not—I do not want to get into a fencing match with you—when people get hurt, they only want to be treated fairly. If I have a kid who needs the money and the insurer will not advance any moneys, or they have a \$1-million policy and we turn to the insurer and say, "Okay look, we know this case is going to take three or four years," which means in three or four years at 10 per cent interest, at a nominal rate, they are saving \$300,000 to \$400,000, which the kid loses. Okay? "We'll take \$900,000 or \$850,000 and pay us now," or "We'll take \$160,000, let's settle the case" and they do not. Does that not give you all the information you need? It is pretty bad.

Mr J. B. Nixon: I am sympathetic with much of what you say, and I would just like to pick up on a couple of points. You talked about the delay and the wait and the refusal of an insurance company to pay out on a policy until there is a judgement.

Mr Pileggi: Excuse me. Which policy? Are you talking the no-fault or the liability?

Mr J. B. Nixon: The liability.

Mr Pileggi: Sure.

Mr J. B. Nixon: Obviously, that is one of the problems which a no-fault system tries to address.

Mr Pileggi: Agreed.

Mr J. B. Nixon: I am also sympathetic with you when you put forward living cases of people who have been denied no-fault benefits under their existing policy or have been terminated, and I do not think by any means that the government in its proposal has accepted the insurance companies' proposition that they have changed their ways. There are some very strong new powers to force and compel payment of no-fault benefits.

You have had the chance to look at the draft regulation and you say there are still some holes and problems with it.

1640

Mr Pileggi: May I give you an example of one very serious one?

Mr J. B. Nixon: Sure, do that, but may I just make a comment before that.

Mr Pileggi: I am sorry.

Mr J. B. Nixon: I would encourage you either to write a reply to the consultation draft or meet with someone and say, "Listen, in my experience these are the real problems."

Mr Pileggi: I have done three things. I have met with two policy planners at the Ministry of Financial Institutions. I have approached all of the groups that I deal with, whether it be the Spinal Cord Society Canada, Canadian Paraplegic Association, head injury association, etc. I have approached Mr Elston and I have approached the committee. To be honest with you, the response I had, in particular from the policy planners—they spent time and they were very, very nice fellows, but one of the things that bothered me is, I got the impression, "Whoa, what are the insurers going to say?" And I do not think that was the issue, I really do not.

Mr Kormos: Shame. Shame.

Mr Pileggi: I do not think that is fair, I really do not. I should not have to argue that someone is entitled to these benefits when he is that badly hurt.

Mr J. B. Nixon: If that was the attitude expressed, I agree with you. You have no problem on this side of the table, either.

Let me go one step further. Assuming it can be properly regulated, that is, the delivery of no-fault benefits—let me just say, by the way, no matter what insurance company you are dealing with, whether it is in Ontario or another province or the United States; whether it is public or private or mixed, in some way, shape or form, you always have these problems.

Mr Pileggi: No.

Mr J. B. Nixon: No? Okay. Tell me where.

Mr Pileggi: Sure. British Columbia.

Mr J. B. Nixon: You have had experience out there.

Mr Pileggi: In fact, every province. I can tell you the worst province is Nova Scotia. In fact, the way they work it in Nova Scotia, you owe money.

Mr J. B. Nixon: You owe money?

Mr Pileggi: Yes.

Mr J. B. Nixon: How does that work?

Mr Pileggi: It is a case by the name of Parry vs Kansa. Mr Parry was an Ontario resident. Mr Parry suffered severe brain damage. He came back to Ontario and we handled his case when I was in London.

The nice thing I can tell you is I think I have worked for the two best litigation lawyers in the country. One is Earl Cherniak; the other one is Ken Howie.

Mr J. B. Nixon: They both have fine reputations.

Mr Pileggi: Yes. They get the bad cases. But the way it worked with Mr Parry by way of determination of the no-fault schedule—are you familiar with how you determine what you get from no-faults? How it works is, you take your gross salary, you multiply it by 80 per cent, and the lesser of the two, \$140 or whatever, that is what you end up with.

What they did in Nova Scotia, or wherever it was, they took his gross salary and they left that alone, and then they took the amount of moneys that he was getting from supplementary coverage. They multiplied that and it worked out he had a negative balance, so, of course, no money was paid.

So I am talking to the superintendent of insurance and I am saying, "Look it, guys, you have done this all backwards." And there is a case on it showing how they have done it backwards, and I had to get in to talk to the superintendent of insurance for Ontario to try to sort it out. But they are just all backwards down there.

In British Columbia, conversely, I had a kid suffering bad brain damage caused by—and I know everyone says it does not always happen that way—let's say, by drunk drivers. He suffered severe brain damage. The no-fault schedule in British Columbia is that they will pay \$100,000 by way of moneys available under the medical coverage, and they will pay 80 per cent of your

gross salary up to a maximum of X number of dollars. I never had any trouble, not one bit of trouble.

In fact, there is one thing you should bear in mind with respect to when we are talking about consent and denial of insurance coverage. In British Columbia, if there is a denial of insurance coverage, they made sure that that policy, whatever the face value, is available. So in that kid's case, there was \$1 million available. But under the Ontario law, the insurer would have been able to say, "There's only \$200,000." Here again, a kid who has not done anything wrong will get \$200,000 in Ontario, but in British Columbia got \$1 million, plus the no-fault. We are talking about a big difference.

Mr J. B. Nixon: There are lots of questions I would like to pursue with you.

Mr Pileggi: Go ahead.

Mr J. B. Nixon: Well, there is no time. But one thing: Would you agree that the expansion of the existing no-fault benefits is a good thing?

Mr Pileggi: I have no problem with that, as I said that earlier, but I think if you are going to expand it, you had better make sure people are going to get it.

Mr J. B. Nixon: So what you are saying, in essence—and I do not want to put words in your mouth—is you have to have a tight system of rules and a tough regulator to make sure it happens.

Mr Pileggi: Let me give you a very minor point: Back in 1982, when the interest rates went sky-high and I was in London, Ontario, the farmers were bringing their cows into the bank, saying to the bank: "Feed my cows. You won't continue with the amounts of moneys I need to continue my loans." In the fine print of this policy, it hurts farmers and the farmers are going to bring their cows into your office and tell you to feed them. That is how bad it is.

The Chair: Thank you for your presentation. It has been very useful. In terms of correspondence back, if you have any additional comments in terms of suggestions on tightening up the regulations, over and above what you have submitted to us, just send them in care of the clerk and I will see that they get distributed.

Mr Pileggi: Sure. Thank you.

The Chair: Just for the committee's benefit, you were handed tickets. Those are for Sudbury and Thunder Bay. Please do not lose them. The committee is adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 1647.

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Priest, Dr George L., Professor of Law and Economics, Yale Law School

From the Gore Mutual Insurance Co:

LaPalme, Serge M., President and Chief Executive Officer

Lewington, John A., Vice-President, Underwriting/Marketing

From the Ontario Association of Children's Mental Health Centres:

Weinstock, Sheila, Executive Director

Ferguson, D. S., Legal Counsel; with Borden and Elliot

From the Employers' Council on Workers' Compensation:

Yarrow, Jim, Chairman

Andrew, Judith, Program Co-ordinator

Frame, David, Treasurer

From the Ministry of Financial Institutions:

Ferraro, Rick E., Parliamentary Assistant to the Minister of Financial Institutions (Guelph L)

Endicott, Eric, Manager, Policy Co-ordination

From the Police Association of Ontario:

Roland, Ian J., Legal Counsel; with Gowling, Strathy and Henderson

From the Ontario Teachers' Federation:

Wilson, Margaret, Secretary-Treasurer

Carey, James, Executive Assistant

From the Ontario Chamber of Commerce:

Cain, Patrick, Chairman, Insurance Committee

Matthews, Linda, President

Rehor, Elaine, General Manager

From the Ontario Coalition of Senior Citizens' Organizations:

Frank, Mark

Duenisch, Reta, First Vice-President

From Cycle Watch:

Beiko, Steve

Sutherland, Kate

Rabinovitch, Jeff

Individual Presentations:

Seigel, John, Chartered Accountant, Laventhol and Horwath Pileggi, Joseph



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Official Report of Debates

Legislative Assembly of Ontario



Standing Committee on General Government

Insurance Statute Law Amendment Act, 1989

Second Session, 34th Parliament

Thursday 18 January 1990

Speaker: Honourable Hugh A. Edighoffer

Clerk of the House: Claude L. DesRosiers

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Thursday 17 January 1990

The committee met at 1000 in room 151.

INSURANCE STATUTE LAW AMENDMENT ACT, 1989 (continued)

Consideration of Bill 68, An Act to amend certain Acts respecting Insurance.

The Chair: I am going to recognize a quorum and try to keep our habit of starting on time. I welcome to the committee the deputy superintendent of insurance for the state of New York, Richard Hsia.

You have half an hour, if possible. The committee has a copy of your presentation. If you could take about 15 minutes for that and then allow 15 minutes for comments, questions and discussions, we would appreciate that. The next half-hour is yours, sir.

NEW YORK STATE DEPARTMENT OF INSURANCE

Mr Hsia: Thank you very much. Good morning. My name is Richard Hsia. I am the deputy superintendent of insurance for the state of New York and I am happy to be here on behalf of the superintendent of insurance and New York state.

We believed in speed in terms of accelerating the system, just as we are trying to moderate speed on the highways. We are a 55-mile-an-hour state. In light of your crowded schedule today, I will also try to speed my remarks this morning.

When applied to automobile accidents, a good no-fault system makes a lot of sense. In New York, which I will try to dwell on, after righting a few early wrong turns, no-fault's performance has fulfilled its promise and continues to work in the public interest over a sustained period of time.

Properly implemented, a meaningful and balanced no-fault system, as reflected in the Ontario motorist protection plan and embodied in Bill 68, should help improve automobile insurance availability and affordability for the enduring benefit of insurance consumers and accident victims in Ontario.

Having gone through all of the work that has been done in Ontario, I want to pause here just to commend the work. I think it has a lot of content

and makes a good deal of sense, certainly in comparison to proposition 103 in California. It has the promise of making a situation that needs to be addressed better, rather than making a very bad situation still much worse, as I think proposition 103 is doing in California. That is, I think, to be avoided at all costs, whether we are talking about New York or Ontario or elsewhere.

In successfully challenging and changing long-standing methods of agonizing recovery long suffered by automobile accident victims in the past, New York's no-fault approach concentrates on restoring to health and returning to productivity unfortunate victims of automobile accidents as fully, as quickly and as painlessly as possible. Accident victims are no longer again victimized by the system itself.

As in Ontario where substantial inquiries have been recently conducted and rapid rate increases confronted, New York's Motor Vehicle Insurance Reparations Act, popularly known as the no-fault law, became a reality in New York following major studies on auto insurance compensation by the New York insurance department and the United States Department of Transportation back in the late 1960s, a time when we were also experiencing in New York double-digit rate increases in the auto area.

The New York insurance department did a study that I think has become a leading source in this area, Automobile Insurance...For Whose Benefit? It became one of the driving forces towards the law that we have now achieved today, which is embodied in article 51 recodified of the New York insurance law, which became effective 1 February for auto accidents at that time. We believe that the question, "For Whose Benefit?" is a key question and that a true, good no-fault system provides much better answers to that basic question.

Before no-fault in New York, and I think I see similar situations here in Ontario, the fault-based insurance system, which in New York the no-fault system replaced, was characterized by many intolerable factors, such as claim settlement delays. The average period of time between dates of accident and reimbursement for economic loss for the injured party was 16 months in New York, and in metropolitan New York City the lag period grew even longer. Indeed, the prior system

encouraged insurers and other players to become adept at manipulating clogged court calendars, sometimes delaying just settlement for many years.

In the context of a negligence-based system, the fact is that you have people who are really seriously injured, who seriously do not receive the compensation that reflects that depth of injury, as well as you have people who are not seriously injured who receive compensation over and above the injury that they in fact have incurred, if they have incurred any injury at all. It is that kind of inversion and, if you will, perversion of the system that results in imbalances and excessive costs that are unwarranted, which a good no-fault system rectifies.

Under the prior system, too often victims were left despairing too long without funds for vital care and rehabilitation. In fact, financial burdens were aggravated by psychic costs. One you can put a dollar figure on, the other is harder to quantify, but I submit it still is a large cost that can be minimized by a good no-fault system because there are great inefficiencies in the prior system.

If you look at the dollars involved, not only the dollar that is finally awarded, what portion of that goes to the victim, but if you look at the insurance dollar at the outset, only 44 cents out of every personal injury liability insurance premium dollar actually went to the victim, with the much larger remainder devoured by administrative, acquisition and legal expense. Of that 44 cents, in fact, eight cents went for duplicate benefits and 21.5 cents for general damages, sometimes known as pain and suffering. We think that economic damages must get the most emphasis, but in fact before no-fault, only 14.5 cents of each premium dollar actually reimbursed the victim for those economic losses arising out of auto accident injuries, a highly inefficient and even cruel system.

Besides that, the prior system was highly adversarial. By its very nature everyone had to be hostile to everyone else, resulting in delays and in dishonesty from time to time or too often. It was a system that tended therefore to favour the stronger over the weaker. The seriously injured victim who needed funds immediately did not get it because it was to the insurer's advantage to protest and procrastinate. Therefore, defending tortfeasors, even if they were wrong, took precedence over providing funds for rehabilitating injured parties. The emphasis or the priority instead must be on rehabilitation, rapid recovery. The whole system was inadequate.

We tried to put together a model no-fault law that has certain fundamental principles, which I see again reflected in the motorist protection plan that Ontario is now putting together. A no-fault system, in order to be meaningful, to be effective, to work, must incorporate the following essential elements: compensation of all auto accident victims; a generous package of first-party benefits or personal injury protection that is sufficient to pay for the economic losses, medical, rehabilitation and adequate income-lost earnings, during the period of disability; prompt payment of those benefits, including wage loss, and in order to finance these generous first-party benefits, the system must virtually abolish the right to sue for noneconomic loss or pain and suffering, except in truly serious cases.

It is that balance that is important. We tried to embody those key components in New York's no-fault law and managed to succeed on three of those four fronts, but not on the last count, the ability to abolish, except for truly serious injuries, the right to go to court.

The initial system did not make that mark because instead of a verbal threshold, it used a dollar threshold, which at the time was \$500, which even at that time was seriously low and at this time would be seriously ridiculous. You had a system that was easy to penetrate, became a target and therefore resulted in cases that were not serious getting into court and, in fact, in cases, whether serious or not, resulting in overutilization of health care costs, which itself is costly.

Apart from that, there were no other safeguards in terms of fee schedules, which we have later instituted, but New York's no-fault law as reformed provides benefits that while by no means unlimited are generous enough to cover most automobile accident situations, particularly the over 80 per cent of all accidents that result in injury but in truth are not really serious, do not cause serious injury. Moreover, for modest premium increments in addition to the mandatory minimum no-fault benefits, New Yorkers can easily purchase additional personal injury protection.

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By the way, at any point if anyone has any questions, I would be happy to pause and try to respond to them.

In any event, the statutory test of what is serious and what is not needs to reduce the frequency level low enough to basically provide for the moneys to fund this generous package of first-party benefits, but it must also fairly

distinguish between what is serious and what is not in terms of kind or dimension. As I mentioned at the outset, New York's no-fault failed to do that.

We have now, however, tried to address that by defining serious injury in the way that is laid out in my testimony. The verbal threshold that you see set out on the bottom of page 6 is a little bit more complicated and a little bit more elaborate than the one that is proposed here. There are things that I think argue for a simpler approach, supporting the way that you are doing it, but I just wanted to give you what the definition of "serious injury" is in New York because it is one test that does seriously differentiate between what is and what is not serious and it has done so in a way that courts in New York have found easy and fair to enforce. Therefore, it has led to judicial consistency and has minimized unnecessary litigation.

In 1977, basically, these reforms of the initial reforms went into place. That included instituting the verbal threshold in describing what constitutes serious injury. Since that time, the New York system has proved very successful, empirically and otherwise, in managing the reparation system for automobile accidents and automobile insurance and has done so in a fair and cost-effective manner. So we have a situation where there are controls that are reasonable and realistic, including fee schedules that govern health service expenditures payable by no-fault. These are things that make sure that the no-fault system is not unfairly isolated by health care providers and therefore, again, it results in greater fairness throughout the system.

One key thing to our no-fault system, and really to any good, effective no-fault system, is again the emphasis on speed. You must try to take all accidents and all accident victims—because even if the injury is supposedly not serious, of course a person who is injured thinks that it is serious and we think that it is serious in the sense that that person has in fact been injured and needs to be restored to a pre-injury condition as soon and as fully as possible.

One critical way in doing that is to make sure that, should any disputes ever arise in connection with no-fault, as they do from time to time, there is a fast manner to resolve those disputes and get all the necessary payments made. So we have instituted a fast conciliation and arbitration set of mechanisms to make sure that no-fault benefits are properly and quickly paid.

I should pause here to mention that, first of all, if you have a clear and fair no-fault system, for

the most part there will not be disputes. First of all, you are taking the whole range of accidents that occur and you say that in fairness and in fact, only about 20 per cent of them are serious in any real sense; 80 per cent of them are not. Those 80 per cent go into the no-fault system and are rapidly handled and paid, and 80 per cent of that 80 per cent is rapidly paid without any dispute at all. You have only the 20 per cent that involves some question of some kind. Otherwise, they are paid well within a 30-day period. It is for those fractions of the fractions of disputes that arise that we have a conciliation followed by, if necessary, an arbitration mechanism.

As a key to improving this no-fault arbitration system, the insurance department has assumed the critical roles of both administrator of the system and conciliator of disputes. The insurance department has committed its resources to the success of the no-fault law. Sufficient staff have been dedicated to the administration of no-fault to ensure a proper implementation by insurers and fairer treatment of claimants.

For example, a no-fault hotline has been established, and it has been in action for over a decade, to respond promptly to inquiries, whether they are from the public, the insurers or whomever, because a lot of the problem simply is that you do not understand the system until you have to confront it. We try to make the system as painless as possible, but it is not necessary to create a large bureaucracy.

We have just 11 examiners assigned to our no-fault conciliation unit which exerts best efforts to resolve no-fault disputes before they are forwarded for formal arbitration. We now have some of the simple and smaller disputes that are in fact arbitrated by insurance department expert examiners. Now as a result of our ongoing conciliation efforts before it ever gets to arbitration, about 40 per cent of that fraction of the fraction that do result in disputes are resolved quickly by department conciliators. Again, that obviates the more expensive and more extended arbitration process.

The arbitration process itself has evolved over the life of our no-fault system, and I mean not only since 1974 at the outset but the 1977 reforms, and we have well over a decade of positive experience. In fact, over the course of looking at the arbitration aspects of our no-fault system, the regulation we have, regulation 68, has been amended no less than 20 times. In fact, I have contemplated a 21st amendment to our no-fault arbitration system.

In 1988, we did a significant revamping of our no-fault system in order to streamline it, to simplify it. Originally, all disputes were decided by arbitrators chosen through a system that we had exclusively administered by the American Arbitration Association on behalf of the insurance department. Under that former system, most of the arbitrators turned out to be plaintiff's attorneys; not that that is bad, but it did result in some sort of, if not actual, perceived bias in the system. We have tried to make the system over time, not only in fact but in perception, viewed as impartial.

Anyway, this first approach was then replaced by a system that utilized four separate and distinct arbitration forums that specialized in different kinds and types of disputes, such as coverage issues, that is, whether an automobile accident was involved at all, or medical expenses, that is, how much medical expense is warranted, loss of earnings, what were the earnings, etc.

A master arbitration system was established to provide a speedy appeals mechanism for awards made in a lower arbitration forum. In addition, attorneys fees payable by insurers to successful claimants, if they succeed in whole or in part, are made subject to an equitable fee schedule that we establish.

The recent changes that I mentioned in revamping our no-fault arbitration system have accelerated the arbitration still more by simplifying and reducing the number of arbitration forums and by making sure that our arbitrators are, as much as we can, expert as well as impartial. Perhaps the most noteworthy feature of our new, simplified and expedited arbitration process is the creation of paid professional select arbitrators.

These impartial arbitrators are appointed by and accountable to the superintendent of insurance who relies upon a screening committee composed of representatives of the claimants' bar and insurers to recommend the appointment and dismissal of arbitrators. These standing arbitrators have fast become known as our superarbitrators and they deliver decisions that experience is quickly showing are considerably more correct, more consistent and speedier.

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All in all, no-fault in New York has accomplished its goals. Since amended and as implemented by the insurance department since the 1977 reforms, the personal injury automobile insurance system has become remarkably more efficient and more equitable in safeguarding

consumers of insurance, as well as in protecting accident victims, and these are its fundamental goals.

Its primary goal, therefore, is the prompt payment of economic losses due to injuries sustained in motor vehicle accidents to all victims, regardless of fault. This beneficial goal is accomplished, in part, by limiting tort recoveries of noneconomic losses where the injury is real but not serious. But where it is serious, then, of course, you can go to court.

We utilize those savings to stabilize insurance rates and fund the payment of generous no-fault benefits. So beyond achieving rate moderation, which is no small accomplishment, the personal injury automobile insurance mechanism expands in efficiency and grows in fairness, and a greater share of the premium dollar is dedicated to swift and direct payments to compensate injured parties for economic losses. We have really reduced these periods from years to months, from months to weeks. These are documentable facts.

All in all, we have a system that has dramatically increased the amount of the dollar that goes to the victim as well as how soon it gets to the victim, and there is a cost to time, a money value to time, a time value to money. Many claims therefore result in settlements on a nonadversarial basis much more swiftly, and in addition to minimizing these quantifiable costs, also minimize agita and anxiety in the system and to human beings.

Effectively, we have reduced the frequency of bodily injury claims by a factor of four fifths. That again explains the split, where I was saying that actually 80 per cent of all automobile accidents that do result in injury do not result in serious injury, but the 20 per cent that do under our test can go into court.

In addition, we have also, by other mechanisms especially, addressed safe driving, because you need to have a comprehensive set of actions, in fact, again reflected in the Ontario motorist protection plan that is proposed, to address not only auto insurance itself but the underlying factors and forces that build into it.

I give these statistics on page 11 of these kinds of things, including the overall rate level changes, because you have to be concerned about not only the rate level but also the pace at which the rate level changes. What you need to do is to try to achieve rate stability and, beyond that, reliability of the insurance mechanism, because that is what, at bottom, results in proper utilization of meaningful insurance and results in

consumer confidence in the insurance system, eliminating wasted motion and misspent emotion.

Basically—and you can read more in the details, and if you want details beyond that, I can try to supply them—we have in New York achieved an automobile insurance market that is stable and reliable as a result of this whole constant range of co-ordinated actions designed to enhance consumer protection and improve availability and affordability. Certainly a cornerstone of our system is a balanced no-fault system that does rely upon a fair serious injury verbal threshold.

Again, I believe, in conclusion, that Bill 68 and the OMPP as a whole wisely take into account the need for a balanced and comprehensive approach, including meaningful no-fault, to address automobile insurance and everything that impacts on automobile insurance. Therefore, arguably—very arguably—if enacted into law, Bill 68 could perform comparable good works in the future in Ontario as in New York.

The Chair: I have Mr Kormos, Mr Nixon, Mr Sola, Mr McClelland, Mrs LeBourdais and Ms Oddie Munro; four minutes, Mr Kormos. The other side is going to have to determine how it is going to break that up.

Mr Kormos: They can chew at that bone or fight over that bone while I am gnawing on mine.

Thank you, Mr Hsia, for coming up here from New York state. Again, I presume you are here as a guest of the government, our provincial government. I thank the state of New York for paying, I presume, your expenses, your travel costs and so on.

The Chair: Just a point of clarification: He is here as an invited guest of the committee, as was Mr Nader, as was the other gentleman from, I think, the United States. That is just as a point of clarification.

Mr Kormos: Do not be defensive.

The Chair: I am not; I just want you to be accurate.

Mr Kormos: Accuracy is the name of the game here. That is what we are all striving for and it has been a difficult uphill battle. I feel like Sisyphus sometimes—you know, that damned rock keeps on rolling back down—in that goal of accuracy.

Mr Hsia: I know this is Greek to a lot of people.

Mr Kormos: I know the Conservative Party did not suggest you as a witness and I know the New Democratic Party, the official opposition,

did not, so I presume you were not picked out of a hat by way of lottery.

Mr Hsia: I would say this, that what we are trying to do is to share our experience and our expertise with whoever asks, and if anyone is in a position to know about auto insurance and insurance generally, that person would understand and appreciate that New York state and the New York state insurance department is the leading expert in the world, in my humble view, about insurance.

Mr Kormos: Who am I to suggest the contrary? No, the reason I raise that is that the chair is right; Ralph Nader came up here, and he came up here back in November too, not as a guest of the committee, because the committee was not considering this bill, and you would not believe what the government had to say about Ralph Nader's coming up here. You know who Ralph Nader is.

Mr Hsia: Yes, sure.

Mr Kormos: Ralph Nader is one of the leading consumer advocates perhaps in the whole world. I do not think the Soviet Union has done a lot of consumer advocacy.

Mr Hsia: Actually, I agree with that, but I would also say that the New York state insurance department is the leading insurance consumer advocate and protection agency in the world—

Mr Kormos: That all depends whose ox is being gored, does it not?

Mr Hsia: —although I think the Ontario regulatory authorities are trying also to emphasize consumer protection, as they really should and really must.

Mr Kormos: Do you know what happens when you are second best? You have to try a little harder, right?

Mr Hsia: Yes, we are trying to set the pace and be a model, and hopefully we are.

Mr Kormos: All I have to tell you is that the government crapped all over Ralph Nader by virtue of the fact that he was an American. I called it xenophobia the other day. It was just incredible that the government really got belligerent and arrogant and said, "How dare this American, Ralph Nader, come up here and criticize our system?"

Now, all I am going to tell you, Mr Hsia, is that I am not going to emulate the government. I am not going to suggest to you, "How dare you, as an American, come up here and tell us Canadians how to do it?" because I welcome

your comments, just as I welcome Mr Nader's. It is all a matter of the sifting process.

The Chair: One minute

Mr Kormos: Yes. You talk about, in 1984, 55 cents of every personal injury premium dollar going to accident victims. That would be 55 per cent, right?

Mr Hsia: Correct.

Mr Kormos: What about claims adjusting costs? What part of the total premium dollar were claims adjusting costs in addition to that, in exact cents?

Mr Hsia: That is a good question, because again, a very substantial portion of any insurance dollar goes to expenses, including loss adjustment expenses, but there are other expenses as well, of course, including commissions, sales, etc. Some people are under the impression that if you pay a dollar, you should get a dollar back. We feel that you should get what you pay for, and in New York you do.

Therefore, what we try to do is to make sure that all components of the insurance dollar are well justified. One thing that is in my statement that I did not specifically allude to is that in New York we also have prior approval of automobile insurance rates for private passenger autos. I feel that this is another safeguard in our system that gives rise to everyone, all insurers, having to make submissions on all rates and all rate changes to us. They must be fully justified and they must be prior-approved by our expert actuaries before they can be utilized.

In addition, we are in a position therefore to inform consumers, consumer advocates and everyone else who cares about insurance about what the story truly is as best we can.

Mr Kormos: We are all going to move to Buffalo tomorrow. What is selling down there?
1030

The Chair: Mr Nixon.

Mr J. B. Nixon: I will try to be quick and leave some time for others. Mr Hsia, thank you very much for coming. I find your testimony valuable and worth while, I think, for all the committee.

You described the pre-no-fault system, or tort litigation, as one to be characterized by delay, both psychological and physical aggravation, inefficiencies, an adversarial relationship which led to insurers taking advantage and delaying just payments. You suggest that with the introduction of the modified no-fault program with threshold, behaviour in fact substantially, if not completely,

turned around. Can you just quickly elaborate on some of those reasons?

Mr Hsia: Yes, of course. It is a very complicated situation, but I think in all fairness that that is an accurate summary of the history as well as of the present and future in New York. Since the inception of no-fault, it is not only the system itself, because sometimes the parties have to deal with the system no matter what it is, and therefore the delays were not necessarily due to the fact that they would have done it otherwise; it is just that the system itself was conducive to procrastination, whereas the no-fault system as we have structured it is conducive to the opposite: acceleration, getting things done fast, fairly and fully. Therefore, you have a better mechanism, a framework for rapid recovery of the accident victims, not only monetarily but physically and psychologically so that they can get back to work, get back to productivity, because there is lost productivity in the entire economic and social system too because of auto accidents, if you are victimized, unfortunately, in a collision.

In addition, to help amplify, interpret and enforce our no-fault system, we have a set of regulations. I mentioned regulation 68 that deals with the arbitration; we have other regulations, including regulation 64, that probably has been amended even more than regulation 68. It provides time frames, reasonable but rapid time frames, for people to do this, the next thing and the next thing in a sequential, logical, business way to get from the outset of an accident to recovery of the accident victim.

Therefore, if someone happens to be run over by an automobile, which happens, unfortunately, from time to time, our sense is that that person already has enough trouble, so let's try to minimize and eliminate those troubles as rapidly as possible. That is what our no-fault system achieves.

The Chair: One minute, Mr Sola.

Mr Sola: You state in your statement that there is topping-up insurance available in New York and you say it is for a modest fee. How modest is this topping-up?

Mr Hsia: In New York, our mandatory personal injury protection on no-fault benefits is \$50,000, which again is generous, but I must observe that what you are proposing is significantly more generous. In addition to the mandatory \$50,000, because of the system—and the system itself is stable, reliable, and therefore people can work and plan upon it—additional no-fault benefits are readily made available. In

fact, most people purchase it and the purchasing of it is really for a few dollars more.

For example, if you wanted to double no-fault benefits from \$50,000 to \$100,000, it is not a doubling of the premium by any means but really only a few dollars, \$10 more to do that, which factors in at about a 3 to 5 per cent addition to that portion of the premium dollar.

The Chair: John, I am going to have to cut you off there.

Mr Sola: Just one short question. You also mentioned that you changed the threshold. How much litigation did you have to define that threshold?

Mr Hsia: We really did not experience all that much litigation. Of course, once the verbal threshold was instituted, there were cases that came up through the court system, including our Court of Appeals, which is our highest court in New York. The Court of Appeals has consistently confirmed and upheld the serious injury threshold, constitutionally and otherwise. I can supply you with the leading cases from New York that explicate that, because of course that is a complicated situation. We have found that the threshold works, essentially because it makes sense and because it is fair. It is a balanced definition.

The Chair: Thank you for your presentation. We appreciate it.

From People Against the Insurance Nightmare, I have Dr White. The clerk has distributed a package of material. I believe the main presentation is about 12 or 13 pages and it is inside the brochure. Dr White, I would ask you to identify the individuals you have with you. We have a half an hour. If we could take about 15 minutes for the presentation and allow 15 minutes for some comments, questions and discussion, we would appreciate it. The next half-hour is yours.

PEOPLE AGAINST THE INSURANCE NIGHTMARE

Dr White: I would like to thank the members of the committee for the opportunity to speak before them. I am accompanied this morning by, on my right, Joe Beattie, who is a labour official from Hamilton; Terry Pearce, a social worker who works in rehabilitation, and Doug Welland, who is an economist. I am a physician and a professor in the faculty of health sciences at McMaster University and have spent many years working in the disability field, doing clinical work and research and teaching in it.

I am here acting as a spokesman for the PAIN organization, which as you can see from the information before you, represents a broad spectrum of people from many walks of life. I am going to focus this morning on some of the points which previous groups have not sufficiently emphasized and which seem to have been getting rather little attention in the media, but before I do that, I would like to start with a point of correction. Mr Nader was not here as a guest of this committee; he was here as a guest of PAIN.

The Chair: Just as a point of clarification, he will not be submitting expense receipts to this committee for reimbursement then? There was a motion by Mr Runciman to that effect. Just so we can get that clear, you are the chairman of the committee, so—

Mr Kormos: That is why the motion was made, Mr Chairman.

The Chair: Okay. Continue.

Dr White: I am also here this morning to deliver a petition with some 4,000 signatures on it from people in the Hamilton and Niagara Peninsula area who are very concerned about this bill.

Before I get to the main thrust of my remarks, I would like to put a frame around what it is that we are saying. We have been characterized by, I understand, the Minister of Financial Institutions (Mr Elston) as a pressure group, dismissively and disparagingly. We are a pressure group. We hope to bring some pressure on the government. We hope to do it by the force of our arguments and by arousing the public so that it can bring some pressure. And I have news for you, Mr Elston: That is what democracy is all about, and one of the issues in the indecent haste with which this bill is put being forward is that democracy is being just more than a little bit short-circuited.

The three things that I principally want to address this morning are the health issues, some of the social justice issues and some of the things that could perhaps be done to improve this bill or at least to limit the damage it is going to do.

At the beginning, let it be very clear that we are not talking about something trivial. This bill has the possibility of having a very profound impact upon the health of Ontarians.

We have to start with the recognition that deaths and injuries from motor vehicle accidents represent perhaps the greatest epidemic in history. The numbers of people whose bodies and lives are damaged in this way are colossal, and as we get better at salvaging the people from these accidents through medical technology, we produce a survivor population with residual

disabilities, which means that not only do we have a huge problem but we have a problem which is getting bigger.

Worse than that, it most typically occurs in young people, who are specifically disadvantaged by this bill and who have most of their earning and learning lives ahead of them. They have not established their earning power. The earning power that they might have 20 or 30 years after an accident which occurs when they are 20 years old has not been established, cannot be covered by private coverage and they are, in any case, the people least likely to have private coverage. So an 18- or 20-year-old youngster who gets hurt in an accident gets \$185 a week for three or four or five years, maybe even up to nine or 10 years and then suffers the reduced earning potential for the entire remainder of his life.

We have to recognize, in addition to that, what is now a universally established principle in health and social legislation fields: health depends upon the psychological and social well-being of the individual every bit as much as it depends on physical integrity. So when people survive automobile accidents with any kind of residual disability and damage, it is important that their psychological and social needs be met, which means providing adequate compensation for lost income and for pain and suffering.

It is humanly and logically impossible—this has been established in several jurisdictions—to develop a threshold beneath which these needs can reasonably be regarded as unimportant. Are we to say that a 10 per cent decrease in life satisfaction for 40 years or the reverse, a 40 per cent decrease for 10 years, does not deserve compensation? That is what this bill tells us.

1040

In its present form, it shows a stunning ignorance of what we have learned about disability over the last couple of decades. It speaks, for example, of "continuing injury." That is a totally illogical combination of words. It suggests that compensation is for the injury rather than for the very specific impact on a person's life that occurs in that person's very specific circumstances.

It suggests that the only things that deserve compensation are those things that can be seen on an X-ray or felt by fingers or heard through a stethoscope. In effect, totally disabling stress disorders—and they are not uncommon—are written out of existence. It suggests there is no such thing as a natural development in a person's work and earning potential. That 18-year-old I

was talking about suffers lifelong consequences and that does not count for anything.

It disregards the creation of future health risks and it involves some of the commonest things which occur in automobile accidents: head injuries, low-back injuries, soft-tissue neck injuries and syndromes that we have learned a lot about in the last 10 years—organic brain syndromes, chronic pain syndromes and post-traumatic stress syndromes. All of these things would be very much in dispute when people are trying to meet the threshold. Arguments are occurring now, and they take days in litigation in courts, about whether these things are physically demonstrable. What reason do we have to believe that those arguments are not going to occur again when people are trying to meet the threshold?

The bill acknowledges the need for psychological treatment but, astoundingly, not the legitimacy of long-term psychological disability. This would be clever if it were not so stupid. It acknowledges the need for treatment and rehabilitation for up to 10 years for the nonpermanently disabled, but nobody who is totally disabled for more than five years gets back to work, even when the damaged tissues appear to have healed, and everybody working in the disability field knows this, even the people specifically, conspicuously, in the insurance industry.

The law would systematically take away from a large group of seriously disabled people the right to seek compensation for their problems. The health thinking which has gone into this bill is so primitive and so out of date that we are entitled to ask who on earth drafted it. There is no difficulty at all in Ontario getting access to world-class expertise in this area. Some of it is appearing before this committee. So why was it not used in preparing the legislation? If one of the purposes of this legislation is to improve how we deal with an important public health problem, why on earth does it not at least reflect some modern thinking in this area?

If the intent is genuinely to address the health issues arising out of the carnage on our highways, this is not the way to do it. The bill, in fact, aggravates the problems. We can predict, sadly but very confidently, that accidents, injuries and deaths will increase following the introduction of a no-fault scheme like this.

Furthermore, the facilities we have to deal with these injuries are already barely adequate and the legislation is going to increase the load and put it where it is least appropriate. Family doctors are not trained to deal with disability.

They are going to have to; they are going to have to make difficult decisions and then defend the correctness of these decisions repeatedly—because that is what is written in the bill—either in their offices or in court or in correspondence. They are not going to like that and we cannot afford the drain on our resources.

The burden is going to be worse because people are going to be referred to specialists and the extra billings on OHIP are going to be a hidden cost resulting from that. What is worse is that while OHIP is trying to deal with this additional load, it is going to experience a substantial drop in its revenue. So the health care of people totally unrelated to anything to do with automobile accidents is also going to be compromised.

Then there is what the bill says about how we are going to treat these injuries. A very large sum, \$500,000, is proposed for rehabilitation. This offer is either ignorant or devious. It really only legitimately applies or is relevant to people who have nonpermanent, nonserious injuries. Speak to somebody who works in the rehabilitation field and ask him, in his wildest imagination, how to concoct an invoice which would spend even half of \$500,000. It is a false offer. It is a shell game.

In contrast to that, there is the \$1,500 monthly maximum to keep people in the community. It is not enough; it is not nearly enough. Anybody who works in the disability field will also tell you this. Who in the disability field was consulted when this bill was drafted?

The second major issue is social justice, although maybe we are just talking about the same thing under a different label. Health and social justice are pretty much the same thing. We are proud in this country, justifiably, about how our social programs provide equitably for the needs of the people. The administration of these programs in Ontario is admired and is emulated by people from all over the world.

At the base of all of this is our justice system and its recognition of the individual's rights to have wrongs corrected. These wrongs cannot be reduced to items in a catalogue. They are very individual, very special and very personal and none of them is more personal than the social, mental and physical wellbeing we call health.

Damage to this wellbeing is the most basic wrong and being able to sue to have it corrected is one of our most basic rights. Taking away any part of this right should be done only with extreme caution and if the people of Ontario are being asked to give up this right they should

know exactly what it is that they are getting in return.

Let us think for a minute about what we have seen in the news for the last three or four months. At this moment we are witnessing national convulsions all over the world as people fight to acquire this right—and we are being asked to give it up. We do not want to give up something so precious and so hard won without knowing whether it is a good bargain. We are not only giving up our right to sue, but our right to advocacy.

Bureaucrats, agency personnel, health professionals and especially people in insurance companies cannot be relied upon to provide advocacy for the disabled person. Once again, anybody with experience in the field knows this and they also know that the advocacy is needed frequently. The people who provide the best advocacy are advocates—surprise—and there is no place for them in this scheme.

Well-resourced and self-protective companies and bureaucracies will be able to do their worst without any fear at all and they are guided by the bill about how to do their worst. They will be doing it through exercising their right to demand repeated proof of continuing disability. This will be onerous, expensive and painful for everybody concerned.

One principle of social justice which drives public health just as much as legislation is that our policies should help and protect those who are particularly vulnerable, either because they are at risk or because they do not have an effective voice. This bill specifically discriminates against precisely some of these groups—the young, the aged, the unemployed and women—and, astoundingly, it proposes to create some new ones.

Consider the small private entrepreneur, the kind of person whose energy and genius we want to fuel our economy. This kind of person, if injured significantly but not enough to meet the threshold, is likely to be wiped out. Two or three years at \$23,400 a year while the business is waiting for him to get back to it will sink the businessman and the business; and so will the inability for a woman to put in 10 or 14 hours a day during the early years of establishing her business. The \$450 a week is really going to be cold compensation for these people.

The people in Ontario have not been well enough informed about these aspects of the bill. Neither the health issue nor the rights issue has received much—virtually any—attention in the media. The silence is frightening. We are

watching a social policy coup, a reversal of human progress and reading nothing about it. There ought to be some alarms. Where are they? And why the rush? What is the reason for the haste in bringing this legislation about or what is the reason for the superficial and often misleading defences offered by the government?

These hearings are better than nothing, but they are not enough. Why not have some broad public debate? Who is afraid of it? Who would be afraid of the results? What is to be gained by finessing this law into existence? And, we have to ask, who is going to gain from finessing this law into existence?

What manner of bargain have we here? What are the people of Ontario asked to accept? We are told, unblushingly, by the government that costs will be reduced. We know that is not true. There is no guarantee that premiums will fall and experience from other no-fault programs suggests they probably will rise—probably. Some costs will definitely increase. Costs will be transferred to the social welfare system, to OHIP and to the legal system because there is going to be a flurry of threshold contests hitting the courts.

These are more or less hidden costs, but there is another one stemming from the need to purchase private coverage which is not hidden at all; it is very obvious. Then there is the difficult to calculate but very definite human cost resulting from a lot of additional and very avoidable suffering. We lose a lot of other social advantages of our civil litigation system, including what ought to be an inalienable right to seek redress through the courts.

We also lose deterrence. The prospect of being held to account for your driving behaviour has been well demonstrated to have a restraining effect on driving and on accident reduction. This deterrence is going to be legislated away. For what? To gain what: speedier payment, higher weekly support, less court congestion, payment when the wrongdoer is unfindable, a resource list, more amply funded rehabilitation? None of these benefits requires either trading away our rights or allowing the aggravation of a major public health problem. This is a bad bargain.

1050

Not only are the people in Ontario in the dark about what this bill really entails, but apparently so are the members of the Legislature who will be voting on it. The legislators owe it to themselves to learn what it really implies because it is such bad law that it is going to come back and bite you. It may fool the people in the short run, but the

government which introduces it is squandering its credibility.

What specifically do we propose? The best approach would, of course, be to reconsider in broad, strategic terms the whole collection of problems surrounding motor vehicle accident compensation. This would mean an intelligent and scientifically based program to reduce the number and seriousness of accidents. It would address the insurance cost question by throwing open to public debate a number of alternative solutions. By "open" I mean full disclosure of insurance industry accounts. To base public policy upon private books is an atrocious betrayal of electoral trust.

We need a social decision based upon the informed wishes of the citizens of this province about how to handle most equitably and practically the price of living in an increasingly mobile society. It would be very much like the kind of decision our society had to reach in establishing medicare. And guess what? Not just incidentally, the insurance industry also opposed medicare at its inception.

If we do not have this kind of broad, strategic approach, at the very least we urge you to reconsider what is at the heart of this bill—the threshold. The way it is now the bill states that in order to be able to sue—you have heard this lots of times, you have read it probably—a person must have sustained permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature. The flaws in this bill could at least be mitigated by changing this to "permanent or serious."

Second, the restriction of this right, the right to sue, to those problems which are physical must be removed. It is disability which is compensated, not the diagnosed syndrome upon which the disability is based, not the injury which leads to the syndrome. It is the effects of the injury. Disability consists of a combination of suffering and inability to perform and to speak as if there were no psychological or behavioural components to it is appallingly naïve. For our law to be consistent with what has been an enlightened health doctrine all over the world for better than a quarter century, it should state, "physical, mental or social impairment."

Third, the precise meaning of such pivotal, crucial, central terms as "serious," "permanent" and "impairment" must be stipulated. Is, for example, a function the same as a capacity or an ability which may involve combined physical and mental functions and in which context and by whom is "important" to be determined?

If these terms are not defined we are going to find ourselves with a pseudo law. There is no way that anybody could decide whether it is a good bargain. The people of Ontario would be asked to give up one of their most precious rights without having any way to decide what they might get in return. Leaving the definition of these terms to be decided in courts, to evolve as case law, is legislative cowardice and it would mean a great deal of suffering and expense for the many years that this process would require.

Fourth, in the interest of reducing judicial confusion, it is essential to correct the embarrassing silliness of the term "continuing injury" by replacing it with something which suggests an understanding of disability. It is, as I have said already, the effects of injury which are or are not compensable, not the injury itself. That such language could have found its way into this bill does nothing at all for our confidence in the wisdom of it.

Fifth, although the increase in weekly benefits is welcome and the supposed increased access is welcome, they have to be indexed. Even now they are barely adequate and, just parenthetically, if we did nothing more than, within the existing system, increase the benefits and enforce the provisions for them, enough litigation probably would be avoided to achieve most of the savings which are said, at least, to be an aim of this bill.

We would like to believe in the good faith of the Premier and the members of his caucus. We would like to believe that he and they have been misinformed. We would like Mr Peterson to provide leadership at this very crucial time to rescue the people of Ontario from this ill-considered and very clumsy piece of work. You and we do not want to remember this exercise as the infamous Bill 68 which took us back into the medical Dark Ages.

Most importantly, whichever approach is taken to the revision of the bill—the strategic approach or the tinkering approach—it is essential that both our citizens and our legislators understand what we are getting into. Issues which are unrelated should be separated. The reduction of motor vehicle deaths and injuries calls for a set of legislative steps, lots of things that we already know quite well how to do, which do not include this kind of no-fault scheme. Indeed, we can be very certain that the general accident problem will be aggravated by this no-fault scheme. Court congestion, insurer misbehaviour, delays in compensation, unreasonably high or low rewards—all these things perhaps need to be

addressed, but there is no logical defence for the idea of attaching them to a no-fault bill.

Please, please undertake to understand what this legislation will really mean and do everything possible to see that the people who have elected you also come to understand it. Otherwise, you are in danger of voting for something which is scientifically, medically and socially indefensible and which will within a couple of years be so obviously bad that it will come back to haunt you.

The Chair: Thank you for your presentation.

Mr Kormos: You raised questions about the purpose of the legislation. You talked about democracy being shortcircuited. You are well aware, I am sure—it happened two days ago and it happened again in every one of the three major papers in Toronto, the Sun, the Star, the Globe—of the huge, enormous ads paid for by the drivers of Ontario, because that is where the Insurance Bureau of Canada gets its money, from premium dollars, spreading lies and mistruths about the persons who would dare criticize this legislation.

The insurance industry has a whole lot at stake. They have profits at stake that are just incredible. Every penny of those profits is going to be earned and acquired on the broken backs, the broken legs, the fractured skulls of seniors and of little kids who are going to be denied compensation as a result of this legislation.

Even sadder is the corruption that has permeated this committee. I have ensured that every time an insurance company comes here to tout this legislation—and tout it they will, because great profits are dependent upon this legislation, notwithstanding that that issue has been addressed. It is only through the press, the television news media last night and the print media this morning, that we learn that Brad Nixon, a member of the committee, was paid off to the tune of \$1,800 by the insurance industry; Carman McClelland, paid off to the tune of \$1,400; Lily Munro, paid off to the tune of \$1,000; Allan Furlong, paid off to the amount of \$1,000; Mr Elston, not a member of the committee, mind you, but paid off to the tune of \$1,150; and Rick Ferraro, paid off in the amount of \$700.

The Chair: Rick wants to complain.

Mr Kormos: If the press reports are inaccurate, these people should stand up and say so. If they are accurate, these people should have disclosed this inherent conflict of interest at the very beginning of these hearings. They come here and they participate in questioning of

witnesses and persons making submissions, attempting to create the illusion that they are evenhanded in their approach to this and that they are merely making inquiries. Inquiries be damned; the fix is in.

This committee has one purpose. In view of the Liberal majority and in view of the fact that it appears that most of those Liberals have been paid off by the insurance industry, the fix is in. The public cannot rely on this committee, in view of that, to entertain anything approximating fairness or evenhandedness or openmindedness when it comes to assessing the horrible impact of this legislation on drivers and, more importantly, on victims: kids, seniors, housewives, factory workers, persons of all ilk in Ontario.

"Democracy shortcircuited"—you have been most generous in your assessment of the situation in view of what I say is the corruption that has permeated this committee, a corruption that could have been confronted in the first instance but a corruption that has been allowed to ferment and grow. As I say, the opportunity was available to these members in the first instance to disclose their conflicts. They have declined to do so. That suggests to anybody watching this and hearing of this that the word "fix," the word "payoff" is far closer to the truth than any of those persons would want to ever imagine.

1100

Dr White: May I respond to that?

The Chair: Unfortunately he used up all your four minutes. We can save some time at the end for a response. Mr Nixon, Ms Oddie Munro, Mr Runciman, four minutes.

Mr J. B. Nixon: At the outset, gentlemen, I want to assure you that any suggestions my colleague over here has made have just been patently false and not correct.

Mr Kormos: You did not get the money.

Mr J. B. Nixon: All of us receive money from a variety of people. I have received money, for instance, from lawyers who are members of the Fair Action in Insurance Reform organization, doctors, seniors, tenants, young people, working people and a variety of organizations and corporations. If Mr Kormos believes that people can be bought off for money, then that is in his own mind.

Mr Kormos: You people have proved it. Show us some fridges and paint jobs.

Mr J. B. Nixon: My specific suggestion to you is that these committee hearings are valuable for two reasons: (1) because we are going to hear constructive suggestions such as you have made,

and (2) we have an opportunity to clear up some misunderstandings about the bill.

For instance, you say on page 5 that this very large sum of \$500,000 that is available for rehabilitation—I would also remind you that there is another \$500,000 available for long-term care—is either ignorant or devious because it is not available for those who have permanent or serious disabilities. I suggest to you that is just not correct. I wonder who told you that.

Dr White: That is a mistake in the wording, which I picked up while I was driving here this morning. You are correct. In what I said rather than what is printed, I said it is only really relevant to those people because people who do meet the threshold will have that paid for in some other way. There is \$500,000 available for the community care. That is quite true.

Mr J. B. Nixon: Right.

Dr White: That works out to 27 years. It works out to 27 years of decreasing dollar values. Somebody who is injured and needs around the clock care at the age of 20 is looked after more or less. After 27 years the value of that \$1,500-a-month maximum will be about \$400, which is not enough to buy food, let alone lodging. What happens after that 27 years? We have 35 years roughly of life expectancy, somebody with a closed-head injury at that point. The burden then falls on the social welfare system. That, I take it, is also a false offer.

Mr J. B. Nixon: Can I suggest to you that the 30 per cent of those people who are injured in motor vehicle accidents now will recover nothing? This is not a perfect solution, but it is a far better solution than the present state of affairs. Those people who do not recover anything in the tort system are thrown immediately on to the general welfare system.

Dr White: You brought that up the other day, Mr Nixon. Okay, there are some people who do not have access because the wrongdoer is unfinable or does not have any resources. There are ways of solving that problem without inflicting this kind of injustice upon the entire population of the province. You do not have to correct it in that way. That really is killing a gnat with a hammer. It does not make any sense.

Mr J. B. Nixon: I am not sure \$500,000 is killing a gnat.

Dr White: How are you going to spend \$500,000 in rehabilitation of somebody? If you spend the \$500,000 on community care, it runs out after 27 years. In effect it runs out after about

eight years because it is not enough even at the beginning to provide for the care.

Mr Velshi: Can I just—

The Chair: Sorry, Ms Oddie Munro for a minute and a half.

Mr Velshi: I am taking her turn.

The Chair: Okay, if that is all right with her. Mr Velshi, a minute and a half.

Mr Velshi: First, just a comment: We are talking about contributions. When you talk about democracy and the democratic right of people to do what they want, there are some people in this room who get their contributions from labour unions. We do not think that is wrong either. I do not accuse Mr Kormos of toeing the labour union line just because he gets donations from them.

Mr Kormos: We're up front about it. You guys don't reveal it.

Mr Velshi: I am talking now. I have the floor.

Mr Kormos: Corruption. You are talking—

Mr Velshi: Keep quiet, sir.

Interjections.

Mr Kormos: More and more corruption every day.

Mr Velshi: You cannot intimidate me. You keep quiet. You may do it to some of them but not to me.

The Chair: Order.

Interjections.

Mr Velshi: I have the floor, Mr Chairman. I need this time. It is about time he stopped intimidating people.

Ms Oddie Munro: You're out of line.

Mr Kormos: I'm not out of line. You're out of line for taking money and not declaring a conflict.

The Chair: Order.

Mr Velshi: You are out of line, Mr Kormos.

Interjections.

Ms Oddie Munro: Shut up. You make me sick.

The Chair: Order. The committee is recessed for five minutes. Thank you.

The committee recessed at 1104.

1109

The Chair: I call the committee back to order. When we left off I had Mr Velshi for a minute and Mr Runciman for four minutes to finish off with the deputation from the People Against the Insurance Nightmare.

Mr Velshi: Doctor, I appreciate that you are a pressure group and I have no problem with your being a pressure group. In fact, I advocate that. I tell people: "Form a pressure group. March up to Queen's Park if something is the matter." I am for that.

You said there are world-class people we should be talking to, and some of them have come before us. If I may say so, we have listened to Ralph Nader and to Mr Hsia, who was just before you. I would term one a person who has world-class experience in no-fault insurance and Ralph Nader is a consumer advocate. Both of them have opposing views.

Based on that, we are going to have to make a decision. While I agree that the Committee for Fair Action in Insurance Reform seems to be looking after people, I dare say that the Liberals also have that responsibility and the government has that responsibility, and we have no excuse to make in terms of what we have done for the people of this province.

I would like a comment on that, if you do not mind, because I think your speech was directed at saying we are hurting people. I do not think that is a fair statement to make.

Dr White: It is very true that you have to weigh different points of view. You have had expert opinion from the insurance industry and I heard a little bit of the opinion you got this morning. I think for your own sake you ought to apply to your deliberations the first law of policy analysis, which is, "You don't ask your barber if you need a haircut." It is very important that you get some views from people who do not have a vested interest in promoting the kinds of advice they are giving you.

I would like to ask a question of you. Do you really genuinely feel that the people in this province, as expressed through the media and as spoken to by the media, understand what is going on, really understand the implications of this bill? If you are easy in your conscience, as a member of the Liberal Party which is supposed to espouse these values, that they really understand, that there is an informed sociocultural decision being made about a crucial piece of social legislation, then maybe you are on the right track. I doubt that you can be easy in your conscience about this.

Mr Velshi: That is for me to decide.

Dr White: It is being whiffled through.

Mr Velshi: That is where you and I differ. I appreciate your point of view, and I think you are going to have to appreciate my point of view too.

Mr Runciman: I made an appeal earlier this week to the backbench government members on this committee with respect to what you are talking about, because the testimony we have been hearing has been overwhelmingly in opposition to this legislation from a great many witnesses who have no self-serving interest. They are here because of a genuine concern about innocent accident victims and what they are going to face if this legislation passes. The response to that appeal was not very positive and I do not see it changing as we proceed with these hearings, so I am obviously not very optimistic that we are going to see that kind of independent, tough stand taken by the government members.

Perhaps part of that reason—I hope it is not but certainly in terms of public perception—is the fact that we now know that a significant number of the government members of this committee have received contributions from the insurance industry. I think it is quite ironic that we have seen government members question some of the witnesses appearing before us to try to determine if they have some sort of conflict, some sort of relationship with legal firms, some relationship with other organizations opposing this legislation. At the same time, they have not been as forthcoming in terms of providing this committee with the details of their own assistance from people who obviously are going to greatly benefit if this legislation goes through.

I think that is the most disturbing element of this. We have a piece of legislation before us that is going to provide one of the biggest giveaways to corporations in Canadian history, at least \$700 million plus, perhaps well over \$1 billion.

Witness after witness has testified, and sometimes in very emotional terms, about the implications of this legislation, yet we do not see any kind of positive response coming from that side of the room. We find that they are getting significant contributions from the insurance industry.

I have become more emotional on this issue. I have been a member of this House for nine years now and I do not think I have been bothered or disturbed by testimony to the same degree that I have been over the past few days, listening to witnesses in this committee, and more disturbed by the reaction over there. I have tried to make that appeal. I was chastised for making that kind of appeal. I took an independent stand a number of years ago and paid a penalty for it in terms of promotional opportunities, but I have never regretted that decision, and I again want to make that appeal to the members over there.

If that is not going to become patently obvious in terms of a change of attitude, a more receptive attitude, more willingness to listen in an objective way to the testimony on a day-by-day basis, then I believe this committee should call on Premier Peterson to remove the members of this committee representing the government who have received contributions from the insurance industry, because clearly they are not able to deal with this in an objective manner. They have not done so up to this point.

As I have said, that is patently obvious and if the attitude and approach does not change in the days ahead I think we on the opposition side have got to take a very clear stand on demanding the removal of those members.

The Chair: Gentlemen, thank you for your presentation.

From Baylis and Associates, there is exhibit 40 in your presentations, but the clerk is also distributing some material.

Interjection: Mr Chairman, I want to raise a question on the distribution of literature. There is a mad scramble here for copies of papers that have been given. I wonder if that situation is being corrected. We do not seem to have copies for everyone here.

The Chair: I will check with the clerk and see what we can do to remedy the situation.

We have half an hour in which to hear your presentation. I suggest that if we have 15 minutes for presentation and 15 minutes for comments, questions and discussions, it would be appropriate, or however you want to use the half-hour; it is entirely in your hands. Please proceed. Identify yourself and we will go from there.

BAYLIS AND ASSOCIATES

Mr Baylis: My name is Shaun Baylis. I am a psychotherapist in St Catharines who deals with rehabilitation of people who have been in car accidents. I am also the chairperson in the St Catharines region for PAIN, People Against the Insurance Nightmare.

I respectfully submit this brief to the honourable members present who are examining the implications of the no-fault plan. It is clearly evident this plan has a number of serious faults that need to be addressed. I have chosen to utilize my time before the committee by suggesting how the plan, as it is at present envisaged, would affect many of the families I have worked with.

The family configuration I am using could be a politician who is earning over \$60,000 per year, his wife who is a full-time homemaker and two children, a daughter of age 14 who is achieving

well academically and a son of age 10. We will give them the family name Elston.

The family was travelling through an intersection when suddenly Mr Elston saw peripherally an oncoming car. The driver ran a red light and collided with the driver side of the Elston car, striking the vehicle in such a manner that both the driver side and the rear passenger side behind him were damaged.

Mr Elston's car was pushed against the curb. Mr Elston's head smashed against the side of the window and he was moderately concussed, while Mrs Elston was seriously shaken up and concerned about her son crying in the back seat. Their daughter was sitting in a comatose position. Mr Elston became aware of the situation, that his head was hurting. He felt somewhat disoriented and could not get out of his side of the car as the door was smashed. The family was taken to the hospital.

Mr Elston had moderate pain to his left side and a bruise on the left side of his head in the temple area. Mrs Elston had a whiplash injury and her right shoulder was bruised. Their son suffered a minor fracture and required a cast on his leg. Their daughter appeared to have suffered no injuries.

That evening Mr and Mrs Elston were unable to sleep due to their pain. The daughter had trouble sleeping as she was suffering from repeated flashbacks of the accident. The son slept well.

The following morning Mr Elston was unable to attend adequately to his job as he felt weak and sluggish. Mrs Elston experience stiffness and soreness that radiated through the right side of her body. The daughter was fearful of getting into the car because she was afraid of being involved in another accident. When the family approached intersections there was a sense of apprehension.

They went to their family physician who gave them the message, "Given time, you will feel better."

The insurance adjuster also called that week to find out the facts.

It became apparent in time that Mr Elston had a persistent complaint of forgetfulness and a lack of recall. In order not to forget, he found himself having to write things down. When he discussed previous experiences he would at times lose his train of thought. He became confused when having to make decisions and no longer had the same level of confidence in himself. He found it difficult to express his thoughts coherently and felt that people did not understand him. His

problem-solving abilities deteriorated when he attempted to go back to the Legislature, affecting his performance on the job. He had difficulty in concentrating, even on a single task, particularly in situations where there was a lot of stimulation and tension, which led to cognitive overload.

1120

He found that when he went to work on a part-time basis for half a day, he was completely exhausted and fatigued. He complained to his family physician, who referred him to a neurologist to explain his fatigue because there were no other apparent injuries. Family physicians are not the ones who usually identify undiagnosed neurocognitive behavioural syndrome stemming from a brain injury.

Mrs Elston began to experience severe pains radiating from her back that went to her thighs and down to her right leg. She also had an appointment with a neurologist. She was concerned with the deterioration in her physical health. Previously, she could have been described as a tenacious, high-energy, warm and affective individual, but she had now become irritable, depressed and guilt-ridden. This produced a feeling of uselessness and helplessness within her.

She had difficulties meeting her household responsibilities such as vacuuming, washing, drying dishes, changing linens, grocery shopping, etc. Her standards declined, exacerbating her guilt feelings. She continued to go to therapy three times a week and became tired from continually going to appointments. She observed her daughter's deteriorating performance due to difficulties in overcoming the psychological trauma of the accident and having to live the nightmare experience of seeing her family's mental and physical health deteriorating.

When either parent was driving, he or she noticed their daughter becoming nervous and overreacting when they approached intersections or there were the close calls so common to normal driving. The family, after several months, received the usual benefits of \$450 per week. This did not cover their mortgage, their car payments, food and other miscellaneous things that they were formerly able to accommodate comfortably prior to the accident.

This resulted in financial hardship because, after a year, Mr Elston was still not able to return to work on a full-time basis and he was becoming quite concerned as to how this was going to affect his future, as he was unable to perform the tasks at hand that were required of him, which of course he had to do if he hoped to be re-elected.

He also felt a sense of frustration because he was not able to verbalize or articulate as before, although he was still able to function. He continued to experience headaches and an inability to recall things, but he was still able to function and care for himself. He was sad and depressed as he saw his wife not being able to cope effectively while he was unable to lend a supporting hand.

Mrs Elston felt depressed because of her disorganization and inability to keep up with the daily tasks. She was no longer able to show her normal affection and understanding towards her children and tended to scream and yell at them. Similarly, her husband became irritable and quite critical with the children. The children tended to avoid being associated with the parents because of their parents' angry outbursts. They noted that their father had changed and no longer had understanding or time for them.

There was an absence of affection between this couple. They did not have their previous energy level because of the unsettling and unresolved anger toward themselves and the accident, resultant financial pressures and concern for the children. They were unable to effectively work things out.

It is worth mentioning that this couple no longer socialized, as they were unable to cope with the demands of social activity, psychologically or financially, and there was a feeling of loneliness, uselessness and alienation. They attempted to hide their frustration by keeping their feelings to themselves and avoiding each other, which led to mutual isolation, absence of intimacy and a strained relationship, which in turn resulted in high anxiety and emotional exhaustion for both of them. Mrs Elston became fearful that her husband would forget to turn off the stove or coffee pot before leaving the house, causing a fire.

The Elston couple considered their predicament. They were receiving \$450 a week. Mr Elston was aware that he would get nothing for the pain and suffering to his family. He realized that he would be unable to recover for the many serious physical injuries, including his son's fracture, and that he would not recover for any emotional or psychological injuries such as depression, shock or anxiety.

He realized that he would not be able to recover the lost salary that he had incurred. However, he did receive his \$450 per week. But this modest sum, compared to his income loss and personal and family trauma, could in no way compensate him, and resulted in a substantial

adverse effect on this family's standard of living, projecting them into a financial crisis.

When working with the insurance adjusters, the Elstons discovered that the adjusters had been conditioned to be suspicious and sceptical towards those suffering from personal injury, particularly when the effects were emotional or psychological, and were reluctant to offer rehabilitation services to this family. By the time they considered assisting these innocent victims, substantial emotional damage had taken place.

What makes you think that a change in legislation is going to change the attitude of claims adjusters who have, over a great many years, been conditioned to think in such a manner?

This family had to decide, with limited resources, whether they could prove that their injuries were of sufficient severity to reach the threshold, giving them the right to litigate. The Elstons were victimized because of the elimination of the responsible driver's legal and moral responsibility. If all but the most serious, permanently injured people—basically paraplegics, quadriplegics or fatally injured—are denied the right of access to the court, mass victimization of accident victims will occur.

The Elstons came to realize that they would get nothing for their pain, nothing for the loss of business and educational opportunities and nothing for mental injury or anguish.

This draconian, uncompromisingly socialistic approach of reducing everything and everyone to the lowest common denominator is going to result in families losing their homes, along with marital breakup, which is serious enough as it is without a political approach that will add to the problem.

As a human being, as a driver, as a citizen of this country and province, I personally want to be certain that if I am ever responsible for injuring another person as a result of my negligence or lack of judgement when driving my car, he or she or they will be fully compensated through my insurance for proven out-of-pocket expenses and trauma, disruption, emotional and physical and mental injuries. I want to feel that my duty as a decent human being has been as fully discharged as is possible.

No amount of money can ever make up for the injury or pain, whether physical or emotional, but it is all that we have. We should not deprive our victims of this recourse merely to satisfy corporate and political appetites for appeasement and dispersal of blame. We must be accountable for our actions, and if through negligence we

injure others, we must pay for it. That is why we have insurance.

The system now proposed does a disservice to all of society and neither compensates adequately nor reflects the caring and conscience of society as a whole. I am acutely aware, after many years of counselling accident victims, of the need to have in place mechanisms which will afford them relief mentally, physically and financially and materially.

This bill provides the very minimum financially and addresses none of the other concerns. It is, in my view, a politically motivated, corporately influenced piece of legislation which does no honour to the political body, the bureaucracy, the government or anybody else. It serves no one, except perhaps the insurance companies, and in the long run perhaps not even them. Ladies and gentlemen, with all respect, you should go back to the drawing board.

Dr Drynan: I am Tracy Drynan. I am a chiropractor from St Catharines, and the professional role I hold as a chiropractor has given me the opportunity to listen, examine and treat people who have been involved in motor vehicle accidents. Prior to participating in the chiropractic profession, I was an ambulance attendant and a pathology assistant. These varied roles have given me the chance to see what happens in an accident from beginning to end. The concerns I have about Bill 68 are the following.

My first concern relates to the issue of future losses for innocent victims who fall below the threshold. An example I have often seen in my office is an injured person who, prior to the accident, had a well-paid, physically demanding position. In some cases, rehabilitation can allow him or her to be maintained in a pain-free condition for long periods of time, but any return to his or her original job causes him or her to experience an exacerbation of the original injuries caused by the accident. The difficulty with this person is that retraining often cannot provide him or her with a job that is as financially rewarding.

Under the new policy, as I understand it, the person would lose his or her first week's wages, then only get 80 per cent of his or her wage, up to \$450 a week, until he or she returns to work. In the same case, if there was retraining which could not fit him or her into a job that paid as much as the job before, I understand that person would not be compensated for future losses.

My second concern is related to chiropractic patients and their ability to obtain chiropractic care, which is provided under the new legisla-

tion. My concern actually is with the insurance companies, which are to be monitored by a government agency for any incorrect behaviour.

Oftentimes now a chiropractic patient is assessed by an independent chiropractor or an orthopaedic surgeon set up by the insurance company. I suggest that the new bill, does not provide for that patient to have access to another chiropractor or orthopaedic surgeon to equal whatever the other assessment is by an orthopaedic surgeon. I feel that people should not have to incur the costs for this type of examination. It is only fair that patients have the right to obtain a doctor of chiropractic's or an orthopaedic surgeon's opinion of their own choice to write a report on the injuries they have sustained.

A concern mentioned among medical and chiropractic colleagues is the fact that reports may no longer be asked for or paid for by insurance companies. In this program, some form of assessment must be done. The form of assessment takes time and knowledge to complete. What often is not realized is that the form, in itself, may only take minutes to write out, but the knowledge that goes behind the information written on the form may take years to collect. Some form of payment must be recognized for the reports that will be provided or professionals will be reluctant to do them. It must be realized that health care professionals have only their time to offer and for that time, they have the right to be paid.

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My third concern deals with myself, an individual taxpayer. In my opinion Bill 68 will cost me more money than my insurance policies do at this time. Bill 68, on the surface, appears to limit premiums, but the cost of private income-replacement benefits is substantial.

Many families who do not concern themselves with having private replacement benefits will now be forced to seek out such policies to protect their income base in times of necessity. In my opinion, the insurance companies will expand their services and people will be forced to seek out insurance companies and pay them additional premiums as a precautionary measure.

Finally, I have always been proud to be an Ontario citizen. I have always felt that I belonged to a modern society that provides help to those who need it. Mr Justice Osborne has said that we should export our benefit scheme, not import. If Bill 68 goes through, I know that generations shall regret that Ontario took a giant step backwards.

The Chair: Thank you for your presentation. We have Mr Kormos, Mr Nixon, Mr Sterling for five minutes each. Mr Kormos, I am going to recognize you only if you can assure the chair that you will refrain from using either insulting or abusive language towards either the witnesses or other committee members or calling into question the integrity of other committee members. If you can give me that assurance, you can be recognized.

Mr Kormos: Are you out of your mind? What are you talking about? You have no right to pull lines like that.

The Chair: Yes, I do. Under section 23 of the Standing Orders of the Legislative Assembly, which we are an extension of, 23(h) says, "A member shall be called to order by the Speaker if he or she:

"(h) Makes allegations against another member.

"(i) Imputes false or unavowed motives to another member.

"(j) Charges another member with uttering a deliberate falsehood.

"(k) Uses abusive or insulting language of a nature likely to create disorder."

As I said yesterday at lunch, the only mechanism that I, as chairman, have to maintain order within the committee is not to recognize an individual and I would only use that in extreme situations. All I am asking for is an assurance, in terms of questioning either the witnesses or calling into question the integrity of the other committee members, or the language, that you would attempt to refrain from that.

Mr Kormos: I will tell you this: My language is either Oxford English or biblical. My comments, if untrue, can be challenged. I talked about people getting payoffs.

The Chair: If you would care to make the same statement once the committee is in recess and outside in the corridor, I am sure other committee members may decide to take legal action against those. All I am saying is that you enjoy—

Mr Kormos: Oh, the old Steve Mahoney approach, huh? If you have your hand in the cookie jar, you threaten to sue.

The Chair: The committee enjoys the privileges of the House, which means—

Mr Kormos: You guys are something else.

The Chair: —that you are free from prosecution for anything said within the committee hearings.

I have a job to maintain order and decorum and to assume that all members are honourable. If you will not give me that assurance, I will not recognize you.

Mr Kormos: Listen, you take me at face value. I represent the riding of Welland-Thorold. If you are going to censor me, if you are going to muzzle me, then you had better say so and we will deal with that in another forum.

The Chair: If you deem censoring and muzzling to be asking you to stop using abusive or insulting language or imputing false or unavowed motives to another member or making allegations against other members, then I am censoring you.

Mr Kormos: I will call a shovel a shovel, thank you.

The Chair: If you are not prepared to give the chair that assurance, then you will not be recognized. Will you give the chair the assurance that you will refrain from that type of language?

Mr Kormos: I would never think of using that type of language.

The Chair: Okay, just so that you are aware—

Mr Kormos: Let's get on with the hearing. These people are waiting and they have to get back to St Catharines.

The Chair: We are not taking any time away from the deputants. As I said yesterday, the only power that I have, really, to maintain order and decorum is not to recognize an individual. All I am saying is that if you can give me that assurance that you will refrain from that type of activity, then I will recognize you. If it happens again, then I will not recognize you. Do I have your assurance?

Mr Kormos: No, this is silly. You are really being silly.

The Chair: All you have to give me is a yes or a no. Will you give me that assurance?

Mr Kormos: Are you not the slightest bit embarrassed about doing this?

The Chair: No. The only embarrassment I have is for the committee members and the individuals who have to watch this and your behaviour. You have embarrassed the committee member of your party to the point where he is thinking of withdrawing from this committee because he is embarrassed by your actions.

Mr Kormos: Too bad, so sad.

The Chair: That is fine and I am saying I am charged with the responsibility of maintaining order and decorum. Can you assure the chair? A simple yes or no.

Mr Kormos: The problem is when you say you are charged with that responsibility, what that means is you are charged with making sure that this bill gets through this committee with the least amount of criticism.

The Chair: I take that as a no. Mr Runciman, Mr Nixon.

Mr Kormos: You are a hack. You have no right to do that. The corruption has gone beyond sitting committee members to you, Mr Chairman.

The Chair: The only ability you have is to challenge the chair in terms of not being recognized.

Mr Kormos: Your problem is that you have a hat size that is bigger than your IQ.

The Chair: Mr Runciman, Mr Nixon.

Mr Kormos: Holy zonkers. If you had brains, you would be dangerous.

The Chair: Mr Runciman.

Mr Runciman: I defer to Mr Sterling.

The Chair: Mr Sterling, sorry.

Mr Sterling: Thank you very much, Mr Chairman.

Mr Kormos: I will take my break early.

Mr Sterling: I was not here when all of this matter arose with regard to the conflict of interest. I do want to say that I do not believe—and I disagree with both my colleagues in the opposition—that members of the Liberal Party who are sitting on this committee are in conflict because they have received contributions from the insurance industry. The very same could be said of myself. I have received in the last election contributions from the Insurance Bureau of Canada and from several insurance brokers in my riding. I do not believe that I am bound by that to make a decision. In fact, I am very much opposing the insurance companies and what they are saying here today.

It is unfortunate that this issue has arisen. I think any one of us, on a number of issues, could be challenged as to what we were receiving from various contributors in the past. I only say that as a member of the Legislature and I think it is an unfortunate thing that has arisen here in this committee.

Mr J. B. Nixon: Thank you for appearing before us and making your presentation.

You have outlined a scenario here which looks like disaster. You talk about this family of a politician and so on. One of the concerns I have is that in the outline of the scenario, it does not recognize some of the realities that would exist.

For instance, you suggest that the father in this case would be a politician. I am assuming you are alluding to a provincial politician. It is my understanding that provincial politicians, indeed all members of the Legislature, have long-term disability. So the financial crisis which you suggest would occur within the family would not occur because there would be that wage-loss compensation. That would be unlikely to exist.

Second, as we have heard from Richard Hsia, who is the deputy superintendent of insurance in New York state, when they moved from a tort system to a no-fault system, because of the change in the system, there was a complete change in the manner and speed with which no-fault benefits were delivered.

Mr Baylis: You are talking about the \$450 per se?

Mr J. B. Nixon: Not just the \$450; the rehabilitation and the long-term care benefits.

Mr Baylis: When was the last time you spoke to an insurance adjuster about the aspect of the implementation that they perceive and the difficulties they are going to have? They have said to me that one of the difficulties they are going to have is just to make sure they get their cheques out on time.

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Mr J. B. Nixon: That is right. We have all had bad experiences in the present system and one of the things this legislation is designed to do is change the present system. For instance, no longer is the delivery or payment of no-fault benefits, whatever they may be, at the option of the insurance company, which I agree is wrong and should be changed; it is now a matter of absolute entitlement of the injured party to receive those benefits. That simple change in the law, reversing the onus and reversing the responsibility, is a dramatic improvement for all accident victims, whether they are at fault or not.

Mr Baylis: I am not sure where the incentive is for them to activate it so quickly.

Mr J. B. Nixon: I can suggest a couple of things to you. Two per cent interest per month on any delays, which does not exist now. The superintendent of insurance has the power to, and will I am sure, declare nonpayment or delayed payment and unfair practice, and for that reason will seek injunctions, significant fines and penalties for breaches of that unfair practice, for behaving in an unfair way. None of those powers exist now.

Mr Baylis: Except the lawyers will be the ones who are representing the client, to be able to push

for them in the previous package. Today when I see the insurance industry I do not perceive that that is going to work as simply as you say. The other thing too is with your politicians—

Mr J. B. Nixon: We have—

Mr Baylis: Yes, I am glad you do have the long-term disability. However, what about the people in your riding? Generally most people do not have it. How are you going to be able to help them?

Mr J. B. Nixon: You have asked me a question and I will try to answer it. One of the things that has become clear, for instance, is that people who are making in excess of \$30,000 a year will buy an additional layer of wage-loss compensation. That is what will be happening in the marketplace.

Mr Baylis: My insurance generally is going to go up anyway then. So really you are saying that I am going to save on premiums here, but I am going to have to pay somewhere else.

Mr J. B. Nixon: I am not saying your insurance is necessarily going to go up. We have not got the figures yet, but let's find out. I agree with you that we should find out.

The other thing I would say to you very quickly is that we had testimony yesterday from a fellow who works for Ken Howie who, you may know, is a very fine and reputable litigation lawyer, one of the best in the country, who outlined the various problems that Thomson, Rogers, a good law firm, is having in getting payment of no-fault benefits. So even in the situation where you have top-flight lawyers, they have not been able to get payment of no-fault benefits. He agreed at that point that the only solution is a tough regulatory power that can compel the insurance companies to pay them on time and continuously.

Mr Baylis: But people do not receive their lost earned income when they make substantially more than the \$30,000. The other part that I think the politicians are not aware of is the aspect that you do not have to deal in the counselling room with these people who have to deal with the frustration of not having enough money, the marital difficulties that take place. We have to be able to feel the sense of helplessness at the time, to be able to help them with their communications and other changes that we have to make from the maladaptive behaviours that have taken place because of the accident.

It is easy for you guys to be on a theory level and be able to look at this thing for the parameters. You have to prove that there is a

psychological dysfunctioning as a result of something physical in nature, and because that it is going to be very difficult to prove, they are not going to get the assistance they need, which is going to create more difficulties and more of a burden on other parts of the system that were clearly identified by Dr Norm White. As a result of that aspect, I have to dovetail with what he is saying, because I have a very similar concern that this is not going to work very effectively at all.

Mr J. B. Nixon: Can I just point out to you that some of us on this committee, and I mean from all three parties, have had personal experience in personal injury litigation, whether as lawyers, psychologists or whatever, so it is not as if we are dealing with this in a vacuum. We may have different views on the program, but we do not come to this table from a vacuum of experience.

Mr Baylis: Sometimes it seems that way, from the way you are presenting.

Mr J. B. Nixon: Well, we may disagree with you.

Dr Drynan: Can I put in one comment? You talked about people getting an upper level of insurance or another layer of insurance, and that is fine; that is acceptable to me as a person. But I have patients who have already been in a motor vehicle accident, and insurance companies are not going to be eager. They cannot get disability insurance now. What says that they can under the new bill, Bill 68? Are the insurance companies going to change the policy that they have for giving disability insurance? Because those people, even though they have altered and now earn over \$35,000 a year, have a disability that cannot get them disability insurance.

The Chair: Thank you for your comments. We appreciate that.

Next we have from the University of Toronto law school, Professor Trebilcock. We have his presentation. Just for the members of the audience who are sitting at the back, I am informed by the clerk that when we ask presenters to bring copies, we ask them to bring 25 copies. We need approximately 15 or 16 for the committee's deliberations, and the balance then are put at the back. In that case, it is first come, first serve. That is about all we can do at this point during the deliberations. Sir, we are in your hands for the next half-hour. I suggest, if you can, 15 minutes for your presentation, which will allow 15 minutes for some comments and discussion.

MICHAEL TREBILCOCK

Mr Trebilcock: Thank you. Mr Chairman, members of the committee, my name is Michael Trebilcock. I am director of the law and economics program at the University of Toronto law school and for the last number of years I have been active in research and policy analysis with respect to the tort insurance crisis, both here and in the United States.

Let me divide my comments into two parts: What do we know about the policy options we are facing in this field and, second, with respect to the particular option before this committee, how could we do better?

First, what do we know about the tort and no-fault alternatives? We start off by saying, like Professor George Priest from the Yale Law School, from whom you heard yesterday, I also love Canada, so much so that I actually live here. I am also, like him, a some-time admirer of the Canadian legislative process and, in this case, I believe, unlike him, that Bill 68 has got it more right than wrong.

However, I am not here to defend the bill in all its particulars. Indeed, I am persuaded that it exhibits a number of significant deficiencies that require redress if we are to have an appropriate mix of no-fault and tort in the automobile accident sphere. However, I have been struck by the extent to which the no-fault/fault debate has been marked by hyperbole on each side and the swapping of war stories and casual anecdotes, real and hypothetical. This is not a rational or systematic way to evaluate our options.

There is a significant body of systematic, empirical evidence available that should be central to an informed debate on the no-fault issue. I and my colleague Professor Donald Dewees of the economics department and law school at the University of Toronto have collected and reviewed this evidence from all around the world. This is part of an ongoing study we are undertaking on the efficacy of the tort system for the American Law Institute. What you have before you is an early draft of the material reviewing that evidence.

Let me review what I think we collectively do and do not know about the tort system and its alternatives in the automobile accident context. The first question is, what are the deterrent effects or safety effects of moving from fault to no-fault? The US evidence on this is hopelessly ambiguous and the findings are not robust or consistent. But it should be borne in mind here that almost all US no-fault systems retain very substantial elements of the fault system.

On the other hand, I agree with Professor Priest and Professor Carr and, I assume, others who have spoken to this committee, that the Quebec evidence is unambiguous, and that is that accidents and fatalities will increase under a flat price, no-fault system, where good and bad drivers, high-risk and low-risk drivers receive first-party insurance at the same price.

What is less clear on the research done today is whether this can be cured completely or mostly by a proper system of risk-rating drivers under a first-party, no-fault system. I am inclined to think that a proper risk-rating system that continues to retain age and sex as rating variables will largely eliminate the negative safety effects associated with the adoption of the Quebec no-fault system.

The second question is, who gets compensated by fault and no-fault systems? A series of studies in the United States, Canada and the United Kingdom have found that fewer than 50 per cent of injured traffic victims, including less than 50 per cent of those seriously injured, received any compensation at all from the tort system.

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Listening to the submission by People Against the Insurance Nightmare preceding my submission, I understand that group's concerns about the impact of the current proposal on those who would have received perhaps more generous compensation under the tort system previously, but that does not speak to what has happened before to the 50 or 60 per cent of seriously injured victims of traffic accidents who, in all these studies, by universal and consistent findings, have received no compensation whatever. This includes people as gruesomely injured as in the example that PAIN presented.

The evidence shows that perhaps a third more victims under no-fault systems receive benefits than under the tort system. It is true that when benefits from all sources, the tort system or the no-fault system, private insurance or group coverage, are considered, the differences between the tort system and the no-fault system significantly narrow but do not disappear. That is to say, no-fault systems deliver compensation to a higher percentage of traffic accident victims. Moreover, these differences narrow only because the tort system is being supplemented by various private, first-party, no-fault benefits.

Let me speak to the adequacy of compensation under tort and no-fault systems. US data suggest that a higher proportion, 90 per cent, of successful tort claimants recover full economic losses than do claimants under no-fault systems,

where only about 80 per cent of successful claimants receive full economic losses. But this difference is offset by the much lower percentage of traffic victims who receive any payments at all from the tort system.

US data also suggest that more than 60 per cent of dollars paid to tort claimants in auto accidents relate not to economic losses but to nonpecuniary losses. This figure is probably lower in Canada, perhaps in the order of 40 per cent. There are serious questions as to whether so many resources of the system should be devoted to nonpecuniary losses. I should add here that Professor Priest in the US has been a principal proponent of the view that the tort system, in assigning so much significance to nonpecuniary losses, is significantly misallocating resources, a point I notice he did not mention, at least in the written version of his oral comments yesterday.

Let me turn to administrative costs. As a percentage of premium dollars, no-fault systems seem to save, various studies find, somewhere between 10 to 20 per cent of the premium dollars in administrative costs. This is achieved principally by saving lawyers' fees, which may explain in part some of the views this committee has received.

An additional point on administrative costs is that these studies find—the systematic studies as opposed to the anecdotal studies—there are trivial or even negative cost-savings to be realized by public administration of any tort or no-fault scheme or combination thereof.

Finally, in terms of what we know, most studies show that no-fault systems deliver a stream of payments and indeed conclude payments to victims much more quickly than the tort system. That is what we know and what we do not know, and I think indeed we know a good deal. In terms of the compensation picture, a well-conceived no-fault system can deliver compensation better, more quickly, more efficiently than the tort system. The question mark is, what do we give up in terms of safety incentives? You have to weigh and evaluate the Quebec evidence in the light of the proposals here to risk-rate drivers under a no-fault system, which I think the Quebec system very ill advisedly rejected.

I move to my second class of comments. How can we do better than the current proposal? First, what is the case for a threshold no-fault system, rather than an add-on system? A threshold system is what this bill proposes; an add-on system is essentially what Mr Justice Osborne proposed. That is, everybody can sue in every case but can collect the no-fault benefits in any

event and simply subtract them from damages recovered in any ensuing tort claim.

The evidence—and again, I think it is systematic; this is not anecdotal evidence—is that low-threshold or add-on systems in the US have experienced the most rapid rate of growth and premiums of any of the systems in the US. Let me just repeat that. Low-threshold or add-on systems have experienced the worst premium record in the US in terms of rate of growth. I want to add that this rate of growth is attributable almost entirely to third party, bodily injury components of these no-fault systems. It is not first-party claims, but insurance premiums being raised to reflect the fact that the insured or insureds under these systems sue third parties more.

You may say, "Why is that?" Under a generous add-on system, for example, the kind that Mr Justice Osborne proposed, once victims have recovered all or most of their economic losses on a no-fault basis, why not have a try for the nonpecuniary losses, alleged or real, by suing a third party? I would predict that if one is concerned about containing premium growth, a generous add-on system is likely to prove the most expensive, as it will deliver generous economic benefits under the no-fault system and then allow victims to sue for nonpecuniary losses under the tort system, but both sets of expenditures will be reflected in escalating premiums.

I am not opposed to a threshold system. The question then becomes, how shall the threshold be defined? I am not entirely comfortable with the way the bill deals with that. It seems to me that in a number of the examples I have seen referred to in briefs, there is a case for relaxing the definition of serious injury to include psychiatric injury or less-than-lifetime disabling injury, but I suggest for consideration by the committee that a somewhat more relaxed definition of serious injury might usefully be coupled with a requirement that injurers who are to be sued over the threshold can only be sued in cases of egregiously inappropriate conduct.

What I have in mind here is reckless or grossly negligent conduct causing serious injury. That combination of reckless or grossly negligent conduct causing serious injury, somewhat more expansively defined than in the present bill, seems to me to capture the kinds of moral instincts many of us share, that deterrent, retributive and corrective justice rationales as per tort law are heavily implicated in cases where an egregiously drunk driver has turned some little kid into a paraplegic. It seems to me that if we get those kinds of combinations of circumstances,

we should throw the book at the injurer, and if throwing the book at the injurer means an unconstrained tort suit, I favour it.

Let me say as well that in terms of discouraging this kind of egregious driving behaviour, I think the committee should be looking at options beyond the tort context, and indeed regulatory strategies. I have in mind particularly high-risk teenage drivers, even more specifically high-risk male teenage drivers, who are off the chart in terms of accident statistics. Here I think we ought to look at options such as raising the driving age; or if not raising the driving age, probationary licence systems where licences can be withdrawn for relatively minor infractions, and night-time or weekend curfews where driving is not permitted. Many jurisdictions elsewhere in the world have tried these schemes, I think with some indication of productive outcomes.

My last substantive point is adequacy of compensation. I am frankly quite concerned that under-the-threshold rights to nonpecuniary damages will be abrogated by this bill, but the bill does not seem to reflect a reciprocal obligation to ensure that most economic losses will be substantially compensated. To me, economic losses here include medical costs, rehabilitation costs, long-term care and, of course, wage losses and related losses.

Obviously, any no-fault bill cannot fully compensate these economic losses without creating serious moral hazard problems. If you get paid as much not working as working, some subset of the population will not work. But in evaluating the adequacy of the economic losses to be compensated under the bill, it seems to me one might approach a judgement as to their adequacy along the lines of assuming a kind of a co-insurance principle of 80 per cent recovery of all after-tax losses, so the victim bears 20 per cent of the losses himself or herself, with a deductible in terms of wage losses of an initial two-week stand-down period but no cap on total recoveries for income losses and indexing of all specified benefits. I think the lack of indexing is deplorable in this bill. The workers' compensation benefits are indexed and there is no excuse for not indexing specified benefits here.

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I would approach the evaluation of the adequacy of the benefits provided for in this bill with respect to economic losses by asking, do they meet this kind of general principle, by and large? Do they guarantee 80 per cent recovery in after-tax terms of economic losses with a deductible for wage losses of the first two weeks

off work? It seems to me the bill does not meet that test in many respects.

Let me conclude. The right to sue, while a hallowed US tradition, as Professor Priest and others have emphasized to you, is not necessarily how civilized societies should resolve all entitlement issues. Indeed, most industrialized countries have displaced or considerably constrained the right to sue in another major accident context, workplace accidents, where workers' compensation systems are, in effect, a form of no-fault compensation for individual accidents. I have not heard critics of the no-fault compensation proposals that are being debated with respect to auto accidents also proposing the dismantling of the workers' compensation system and a return to a pure tort system for industrial accidents. I wonder why not.

The right to sue has an important role to play in our system of entitlements but it does not have the status, as some would imply, of a foundational, Magna Carta, constitutional principle. It should be retained in a contained role in the auto accident field, but it should not control the field. The legal profession in Ontario, through Chief Justice Meredith's royal commission at the beginning of this century, spearheaded efforts to get rid of, in Chief Justice Meredith's own words, "this nuisance of litigation in the field of industrial accidents." A similar leadership role is called for from the legal profession in the present context, but unfortunately now, unlike then, with self-interest more substantially implicated, they apparently would rather fight than be right.

The Chair: Thank you for your presentation. I have Mr Sterling, Mr Nixon, Ms Oddie Munro.

Mr Sterling: Thank you very much. Although of course I disagree with some of your conclusions on the basis of the evidence I have heard, I think your presentation is balanced in a lot of ways in terms of how you view this.

One of the frustrations we have had in terms of the opposition is asking for details as to how this system is going to work in terms of actuarial evidence as to what it is going to cost and where some of the premium reductions are coming from.

Part of our problem in terms of the premium reductions is coming from a gift of \$143 million or so to the insurance industry by striking away a three per cent tax on the premiums. That revenue is going to have to be collected somewhere else in our system. We would like to know what the costs are going to be, in that the workers' compensation system is going to pick up part of costs that were formerly covered by auto

insurance premiums. Our OHIP system is going to require more money from other taxation sources because of this.

I guess what we find most repugnant in the government's argument is that, one, we have asked questions about what the actual costs are and it seems reluctant to provide those or is going headlong into this without providing that. Therefore, I do not think the issue is perhaps being measured on an even-stein basis.

We heard evidence in front of this committee from several people, Ralph Nader and Mr Priest, yesterday regarding the fact that there were 18 states that had gone into no-fault systems, either with or without thresholds. Two had withdrawn from those systems. The evidence I heard was that in those states, the premium rates for auto insurance had increased more rapidly than they had in the states where there was a fault system.

Mr Trebilcock: That is true.

Mr Sterling: What is the reasoning behind that?

Mr Trebilcock: I tried to offer a reason briefly in my comments that with low-threshold systems or add-on systems where you can collect your no-fault benefits and then sue anyway, the evidence seems to suggest that people become more litigious with respect to claims against third parties. You already have in hand full or substantial coverage of your economic losses; why not sue the third party for your nonpecuniary losses?

Then, of course, in terms of the premium that you are paying on a mixed policy—it really is a mixed policy that covers first-party benefits and then exposure to third parties—this is going to dramatically escalate the premiums.

Mr Sterling: In terms of this system, I think there is going to be substantial subsidization by the government, as I mentioned, through the OHIP system, through the workers' compensation system, etc. That is going to keep premiums down to some degree.

Mr Trebilcock: I guess I was trying to suggest that if one were looking at, say, the Osborne alternative, which would be substantially enriched first-party no-fault benefits but a right to sue in every case, I would predict a substantial increase—

Mr Sterling: In that case.

Mr Trebilcock: —in suits against third-party injuries by victims who already have a cushion of resources covering off their economic losses. That has been the experience in the United States with states that operate add-on systems or very

low threshold systems. You may say, "Well, it would be a good thing to encourage suits," but we ought to accept and not kid ourselves about what the premium implications will be. Premiums will go through the roof.

Mr Sterling: The other question I had was, one thing that we are not talking about very much in this committee or have heard very little evidence about is how are we going to determine what premium rate various people pay in the future, particularly people who cause accidents and people who are innocent victims of accidents. In talking to the insurance industry outside of this committee, it indicates some concern about that as well.

If you do not have an advocacy system or a system which is pitting insurance company against insurance company or individual against individual, often as a result of settling the financial matters, you also get a fairly accurate determination of fault. Under this system, as you understand it, is there going to be any way of determining, in an accurate way, who is at fault?

Mr Trebilcock: I think it is important that the system have a reasonably refined form of risk rating in it. I argue for retaining age and sex because they are not perfect but nevertheless are reasonable predictors of accident propensity.

It seems to me moving violations are another potential rating factor, along with the kind of background factors that are used now: urban versus rural driving, leisure versus business driving.

Beyond that, there is a question of how accident involvement will weigh in the premium-setting exercise where there is no formal determination of fault. Given that 98 per cent of cases now are settled informally, I assume informal judgements may continue to be made as to who was at fault, not in terms of entitlement to benefits but in terms of premium determination, the so-called fault charts.

Mr Sterling: In the present system, of course, you have one insurance company pitted against another trying to determine, or argue at least, on its clients' behalf that he was not at fault. Therefore, there is still the push and shove with regard to that. Under this system, there is not going to be that push and shove, nor do I understand from the government's plans, it is willing to use age and sex as a determinant.

Mr Trebilcock: As a rating variable.

Mr Sterling: As a rating variable.

Mr Trebilcock: There was certainly a proposal mooted a year or so ago to abandon it. I

regard that as seriously misconceived, as I think the Quebec experience shows. By offering kids first-party insurance for \$300 when they were paying \$2,000 or \$3,000 before, you let loose a lot of these crazies on the highways who were previously priced off the road. I think this is a case where misconceived concerns over discrimination on the basis of age or sex get us into trouble. These people should be zapped.

1210

Mr Sterling: Could I just ask a final question?

The Chair: Okay.

Mr Sterling: Based on the fact that I do not think they are going to do that, if they do not differentiate the rating on the basis of age and sex—

Mr Trebilcock: Along with these other factors we were discussing.

Mr Sterling: —with these other factors, does that change your opinion about whether or not a government should abandon the tort system and go to a no-fault system because of the very detrimental effect in terms of the driving?

Mr Trebilcock: I worry about it more, but we must remember this proposal was originally mooted in the context of a tort system. It was proposed that the insurance industry be required to abandon the use of age and sex in rating premiums for third-party insurance, never mind first-party. If this proposal were pushed, whatever the kind of system we have in place, it would have a deleterious effect. The problem is not peculiar to the no-fault system.

Ms Oddie Munro: There have been some concerns expressed, and I think there should be, as to whether the no-fault benefits and the fault to deterrence would result in increased accidents, and all sorts of evidence was being brought before us. But I am pleased to see that you have looked at the aspect of the individual driver responsiveness and the ability of people to be able to change as a result of negative and positive reinforcement, and also the fact that notwithstanding the deterrent aspect of a tort system, the deterrence aspects of the combined first-party no-fault with the other deterrents put in under the plan would not see an increased accident frequency. I wonder if you could respond to that.

Mr Trebilcock: I think I would probably favour going further than the current proposals outside of the tort context; that is, the ghost cars and more policing of speeding on Highway 401 and so on. I think we ought to be looking at much more restrictive licensing arrangements for young drivers. I mentioned probationary licences

and licences that have curfew conditions attached. Various countries have tried this and the results look promising.

You do not want to just raise the driving age bluntly. There are more sensitive ways of preventing the teenagers with a bunch of kids in the car going out and getting blasted and then killing themselves and others after some late-night party, by, for example, restricting driving of people between the ages of 16 and 21, or 18, or whatever you want to choose, to daytime driving to get back and forth to work so that they do not have to be cruising around at two in the morning.

Ms Oddie Munro: Is there anything within the no-fault benefits side of Bill 68 that would, in your opinion, lead to drivers having increased frequency of accidents? I am talking about drivers who would have been treated.

Mr Trebilcock: I think much depends on the kind of discussion I have just been having with Mr Sterling as to how the insurance is going to be rated.

Ms Oddie Munro: But would they have less responsiveness? Would they care less? One of these studies talks about a host of caring factors and insists that because everyone would be covered on the no-fault side, people would become less caring. I just think people—from my own point of view, none of us wants to die or have an accident or cause an accident.

Mr Trebilcock: If that were literally true, we might as well abandon all efforts to prevent traffic accidents, and not only through the tort system. "Take the police off the highways and everybody would be driving just the same because of the sense of self-preservation." Unfortunately, experience suggests that is too noble a view of human nature.

Mr J. B. Nixon: Thank you for appearing before us. In the early part of your presentation, you suggested that under the tort systems, approximately 50 to 60 per cent of injured victims would not receive compensation.

Mr Trebilcock: Do not.

Mr J. B. Nixon: Do not. For my own edification, can you refer me to the studies?

Mr Trebilcock: They are all reviewed in the document that you have.

Mr J. B. Nixon: They are in the paper, okay.

A second thing: One of your colleagues, Professor Jack Carr, was before this committee and he produced the Rose Ann Devlin study. The Rose Ann Devlin study means the study of Quebec and the correlation or causation between no-fault and accident frequency. My understand-

ing, and perhaps you can confirm it, is that the Rose Ann Devlin study was conducted during a period when there was no-fault premium rating.

Mr Trebilcock: That is right. It was all flat price. You could have had six drunk-driving convictions and you would buy insurance for exactly the same price as anyone else.

Mr J. B. Nixon: Subsequently, Quebec did introduce a fault-based premium rate.

Mr Trebilcock: I have not seen this. That may be so. This would be quite recently though.

Mr J. B. Nixon: Yes, it is quite recent. My understanding is that the accident frequency has actually reduced with the introduction of a fault-based premium rate.

Mr Trebilcock: Right.

Mr J. B. Nixon: Would that make sense?

Mr Trebilcock: It would. I think it is absolutely central to preserve that in the system.

The Chair: Mr Sola, a minute and a half.

Mr Sola: In your remarks you have just lightly touched on the fact that public administration of a no-fault system would have some negative effects. You did not go into detail. Thankfully, a member of the opposition was not here at the time, otherwise we would probably need service people in here to repair the ceiling, but could you please expand on that?

Mr Trebilcock: Yes.

Mr Sola: I would like to touch on one other thing because of my limited time.

Mr Trebilcock: Okay. Can I deal with that quickly before I forget it?

Mr Sola: Go ahead.

Mr Trebilcock: What I said was, in terms of administrative cost savings, by moving from tort to no-fault, there seemed to be a savings of about 10 to 20 per cent on the premium dollar in terms of reduced legal expenditures. Then the question is: "Suppose you had the system publicly administered as opposed to running through the private insurance sector. Would there be some more administrative savings?"

The Osborne commission and the background research done by them finds trivial administrative savings on the most optimistic analysis. On a harder-note analysis, taking account of various invisible subsidies to the publicly run auto systems in other provinces, the cost savings may indeed be negative, as it would cost more to run it publicly than privately.

Mr Sola: You touched on invisible subsidies. I wonder if you could put some visibility to those subsidies. I just want to make one more statement before you answer that.

You mentioned adequacy of compensation under our no-fault system. We had Mr Hsia, the deputy superintendent of the New York system here this morning, and in answer to a question by me he indicated you could basically double the no-fault provisions for just a few dollars more premium. That is one way you could supplement that aspect of it.

Mr Trebilcock: The economic benefits.

Mr Sola: Right.

Mr Trebilcock: Yes. The invisible subsidy—I cannot give you dollars and cents here, but the Osborne commission does have those hard numbers. For example, the public audit corporations are tax exempt. They pay no taxes. It represents forgone revenues for the government in terms of taxes forgone that private insurance companies pay. That is an implicit subsidy to the system in that it enables them to charge lower premiums, but there is a cost being picked up elsewhere, presumably through higher taxes in some other context, provision of public facilities at nominal or below-market rentals, a range of factors of this kind.

The Chair: Okay, professor. Thank you very much for your brief.

Mr Trebilcock: Thank you.

The Chair: The committee stands adjourned till two o'clock this afternoon.

The committee recessed at 1219.

AFTERNOON SITTING

The committee resumed at 1400 in room 151.

The Chair: I am going to call the committee back to order and welcome to the committee Mr Mandel from the Fair Action in Insurance Reform. The clerk has circulated a package and I believe the pertinent submission looks like this. It is about 18 or 19 pages in length. We have half an hour and we would welcome your presentation at this time.

FAIR ACTION IN INSURANCE REFORM

Mr Mandel: Members of the committee, as you know, my name is Lawrence Mandel. I am a lawyer and I am counsel to FAIR, which is Fair Action in Insurance Reform.

What you have in front of you is a package outlining the brief of the FAIR committee to this committee. You also have two letters from Gordon Henderson, a letter from the Honourable Mr Justice Haines and a letter to me from Jack Carr, professor of economics at the University of Toronto, to which is attached a letter from Anne Gray of the Ministry of Financial Institutions.

If we can just go to the brief for a moment, I know the time is short, so unfortunately I cannot take you through this brief. I know you will read it and consider it. I certainly commend it to you. May I just take you to page 20 of the brief. It is the submission, a document entitled Submission to the Standing Committee. Just go to page 20 for a moment and look at paragraph 9.13. I will just read that aloud to you. It says:

"Ontario should reject the OMPP"—the Ontario motorist protection plan—"which significantly reduces benefits to innocent accident victims, which increases benefits to negligent drivers, which goes against our long-held views of fundamental justice and fairness, which for the vast majority of injuries treats innocent accident victims and negligent drivers the same, which adds uncertainty to the system, which results in increased accidents and which results in many areas of hidden increased costs."

There is an awful lot said in that paragraph and the reason I am pointing it out to you is that I suppose it is basically the conclusion paragraph, but everything in that paragraph is proven by what precedes it.

In order to assist you when you have the chance to read this submission, as I know you will, you will see that the submission is broken down into headings. The first portion, if you look

at page 1, gives you some very interesting quotes from the government's own commissions: the Osborne report, the Osborne inquiry appointed by this very government, the Liberal government, and the report, of course, of the Ontario Automobile Insurance Board, that report being commissioned by the Liberal government.

Then if you go to page 3, you will see the heading "Reduced Benefits to Innocent Accident Victims." Under that heading, if you look at paragraph 2.3, you will see a quote from the Ontario Automobile Insurance Board. It should be noted that the Ontario Automobile Insurance Board felt that the Michigan threshold precluded serious injuries. That is the Michigan threshold, and the Michigan threshold, as you know, is a much less stringent threshold than the one that is presently being proposed. The government's own board felt that even in Michigan serious injuries are precluded. We are not talking about minor injuries or insignificant injuries. The government's own board found that serious injuries would be precluded from an even less stringent threshold than the one we are talking about today.

The quote from the board, of course, is, "The evidence before the board indicated that the Michigan threshold precludes recovery not only for minor or transient injuries but also for serious injuries involving hospitalization, operations, chronic pain, several months' absence from work and restrictions on an individual's previous employment, household and recreation activities." That is important because there the board is only talking about the Michigan threshold. If the board concluded that Michigan precluded that serious an injury, what type of injury is going to be precluded by the threshold that is presently being proposed?

Going on, if you look at page 5—as I say, I cannot go through this whole brief—if you look at paragraph 2.8, I think you will see an interesting comment where it states, if an innocent accident victim has his \$80,000—let's talk about a rich victim here—BMW totalled in an accident, this person receives full compensation for the loss of his car. I do not care if it is an \$80,000 BMW or a \$15,000 Volkswagen, it makes no difference. If our \$40,000-a-year worker—suppose we have a \$40,000-a-year worker—is an innocent victim of an accident and is off work for a year, he receives the inadequate compensation level of \$23,400. Why is property damage fully compensated but

bodily injury loss and loss of income are not fully compensated? In other words, you are treating the property damage far more seriously than you are treating bodily injury or a person's income. Does that make any sense?

Once again, if you go to page 8—I am not going to spend much more time on this document, because we have other things to discuss—you will see under the heading “Increased Unfairness,” reading at paragraph 4.3, “There are those who argue that most accidents are caused by momentary inattention and hence there is no distinction between innocent and negligent.”

I must tell you with the utmost candour that the insurance industry—and I say this with the utmost respect to the insurance industry—tries to tell everyone that accidents really are not a matter of fault. It is just a matter of mere momentary inattention. Unfortunately and to my surprise, I have seen members of the government adopt those buzzwords, “momentary inattention.”

I cannot understand why they would do that, because the fact of the matter is that is just not so, and the main members of the government know that because the Minister of Transportation (Mr Wrye) has said, quite candidly, in the fall-winter 1989 Ontario Traffic Safety Bulletin put out by that ministry, on page 1, “Excessive speed is a major factor in accidents causing fatalities, serious injuries and extensive property damage.”

Excessive speed is not momentary inattention. Excessive speed is deliberate conduct. People choose to speed and cause accidents. People choose to follow other vehicles too closely and strike the other vehicle in the rear. That is not mere momentary inattention.

Mr Wrye also goes on to say in that very bulletin, at page 12, “More Ontario drivers aged 16 to 19 are involved in accidents than any other group.” The insurance industry recognizes that. That is why the insurance industry wants to charge higher premiums to that age group than, say, the 40- or 50-year-old age group. I can understand that, because evidently it has been shown that that particular age group drives faster, more recklessly and closely behind other vehicles. That is not mere momentary inattention. The insurance industry knows that because it rates people because of the way they drive.

Mr Wrye, the Minister of Transportation, knows that. He said it, further at page 12 of that very bulletin, “The number of drinking drivers involved in accidents in Ontario totals approximately 18,600. More than 430 of them were in fatal accidents and 10,000 were in accidents

resulting in injuries.” Mere momentary inattention? Please.

1410

The rest of the brief on that particular point deals with why the negligent driver should not be treated the same as the innocent victim. The negligent driver should not be treated the same as the innocent victim, and please do not listen to this nonsense about mere momentary inattention. A minister of this government, the Minister of Transportation, has really put that to rest by saying the major factor is speed. You have other statistics on drinking and driving and the Minister of Transportation in that very bulletin deals with that as well. This very government has shown that it is not mere momentary inattention, and the insurance industry itself, by the way it rates drivers, shows that it is not a matter of mere momentary inattention.

Let's just go on. You will see at page 10 the heading “Increased Accidents.” I must tell you, very quickly, I know this is a contentious issue. I am not saying it; the Ontario Automobile Insurance Board has said it. They devoted a chapter to this issue and in the Ontario Automobile Insurance Board report, after seven weeks of evidence, cross-examinations of witnesses coming from the United States and all over Canada, they concluded that the more responsibility you take away from the negligent driver, the more chance you have of increased accidents. That is what they found. They looked at Quebec and they looked at the studies in Quebec, and the government's board found that as a fact.

The threshold—and we deal with this at page 12 under the heading “Increased Uncertainty”—will create a great amount of uncertainty for innocent accident victims.

You will see the next heading at page 13, “Hidden Increased Costs.” You will see what is going to happen when you have this threshold. Costs are going to be thrown into other areas, into the workers' compensation area, into legal aid. Legal aid will incur more costs now because of this particular threshold that is being proposed. OHIP, of course, will have increased costs. That is dealt with under that particular heading.

What is most important—I am not going to refer to the submission any more, it is in the submission; and this is not me talking, this is Mr Justice Osborne and the Ontario Automobile Insurance Board—both those commissions set up by this very government have said the following about thresholds: Thresholds probably do not

save money, but if they do, the only savings come off the backs of innocent accident victims.

I am not saying that. I know that. Mr Justice Osborne said it. The Ontario Automobile Insurance Board said it. The only real savings, if there are savings, come off innocent accident victims. Have you heard the government say that yet? No.

Why? The reason the government will not say that is that it does not want the public to know that, and that is not fair. So what did we do? We wrote a letter. Professor Jack Carr, who was retained by Fair Action in Insurance Reform to assist, wrote a letter under the Freedom of Information and Protection of Privacy Act requiring information on this latest proposal.

In fact, we requested actuarial reports to see how the government arrived at its figures—a fair request. Certainly, we have given all our information to the government on prior negotiations in trying to deal with what the proposed plan should be.

May I refer you now to Mr Carr's letter dated 18 January 1990. I have it right here. Mr Carr writes a letter to me outlining exactly what happened in regard to his request for information from the government under the freedom of information act.

First of all, attached to Mr Carr's letter is a letter from Anne Gray, who is entitled information and privacy co-ordinator with the Ministry of Financial Institutions. She wrote to Mr Carr on 4 December 1989 and I do not have to go into what the letter says. She acknowledges his request for information.

To make a long story short, if you look at Mr Carr's letter—I encourage you to read the entire letter, but if you look at the last paragraph on page 2, he says: "I am writing this letter to inform you of the situation. The government has 27 documents pertinent to my request under the freedom-of-information act and the government is only willing to release four of these documents, all of which are currently in the public domain."

Let me stop for a moment. There are approximately 27 reports or pieces of actuarial information. The government has told Mr Carr, "We'll give you four." Those four are in the public domain. Not only are they in the public domain, they are the four documents that were filed in front of the Ontario Automobile Insurance Board months ago when we had these long hearings, so we know what those documents say. Why do they not give us the other 23? Mr Carr concludes, "Thus the government has 23 docu-

ments pertinent to my request which it has refused to release."

Now I ask the question, why do they not give it to us? Shame. I have the answer. The reason they do not give it to us is that they know if they give it to us we will be able to demonstrate, on the government's own information, that if there are savings from threshold, it is only because it comes off the backs of innocent accident victims. They know that. I challenge the government to give us the information that we requested. What are they going to say, it is cabinet secrecy, cabinet documents? Are you suggesting that actuarial reports are cabinet documents? My God, I say this with the greatest respect, most of the ministers would not understand an actuarial report. I say that with the greatest respect because I am not sure that I always understand an actuarial report, and I am in the business of understanding them. So no one can hide behind cabinet secrecy.

The biggest problem we have with the proposed legislation—there are a lot of problems with it, but the biggest problem—and because the time is limited, I had better run to it right away—is the threshold. The threshold, I hate to say, is evil, unfair, uncertain. It presents a huge mountain to innocent accident victims and it will not allow 90 to 95 per cent of those innocent accident victims to climb over the mountain, just to find out if they have a right to claim compensation. To put it bluntly, 90 to 95 per cent are eliminated from their right of claiming compensation—totally eliminated—a very stringent threshold, a very discriminatory threshold.

Of course, you are aware of the fact that if your injury is mental, no matter how permanent and serious, you cannot claim for compensation. "We don't care how serious, how permanent your emotional or mental injury is, you can't claim for compensation," says the government in its proposed legislation. Utter discrimination.

Of course, it discriminates further against the injuries that are physical, because it eliminates 90 to 95 per cent of those people who are physically injured. You are either in or you are out. If you do not pass the threshold, you are out. If you pass it, you are in. Talk about a lottery.

I should say that so discriminatory is this legislation that it compelled an opinion from a gentleman who I think is known by most of you. This gentleman is one of the foremost constitutional lawyers in Canada. The Attorney General (Mr Scott) knows him very well because he was Mr Scott's senior partner before Mr Scott became Attorney General. I am talking about a gentleman called Gordon Henderson. You have two

letters from him, one dated 1 December 1989, another dated 16 January 1990, and you also have his qualifications. His qualifications are quite lengthy and I do not have the time to review them with you, but this gentleman is the past president of the Canadian Bar Association and a highly qualified, experienced constitutional litigator.

What does he say? He says in his 1 December 1989 letter: "As an experienced constitutional litigator, it is not my practice to give unqualified opinions as to the constitutionality of any legislative proposal." He is talking here about the threshold. That is what we are talking about, the proposed threshold.

He says: "However, I am able to say that I do see a good arguable case to support the view that the threshold proposed in subsection 231a(1) is unconstitutional." Then he goes on at the bottom of the paragraph I just read from, "Finally, the threshold is set so high that it excludes recovery in tort for all but death and permanent serious injury, thereby discriminating against those with less serious injuries."

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What he says in the next paragraph is interesting, because whatever opinions this government has—I assume this government has opinions on constitutionality—I wonder if it has considered this, and Mr Henderson goes on:

"In my view, there is a sufficient basis for constitutional objection under section 15 of the Canadian Charter of Rights and Freedoms to require the government to justify the proposed amendments under section 1 of the charter. The ability of the government to do so may well be impeded by the findings and conclusions of reports earlier commissioned by the government into this subject."

What is being said here? This legislation is so extremely prejudicial that there is a burden cast on the government to justify it, and the government is going to have a hard time justifying it in view of the Osborne report commissioned by the government and in view of the subsequent Ontario Automobile Insurance Board report commissioned by the government.

The legislation may well be unconstitutional. Mr Henderson follows up with another letter. This is a letter dated 16 January 1990. He says, and you have this letter, that he has considered the matter further and then he goes on and says:

"In the event the bill is enacted, I would urge the government, before the bill is proclaimed as law, to direct a reference to the Court of Appeal as to the constitutionality of the controversial

aspects of the bill, particularly those aspects that relate to the threshold for civil liability.

"My concern is that if the bill comes into force in its present form, it is likely to be challenged constitutionally."

I will not bother reading the whole letter. What the essence of this letter says is that if this government enacts this legislation and then proclaims it without checking on its constitutionality and then subsequently it is argued and challenged—it will be challenged, you may rest assured—and found to be unconstitutional, there will be chaos because between the time the legislation becomes law and the time it may be found to be unconstitutional, what happened to the innocent accident victims in the meantime?

By the way, Mr Henderson, in all fairness, asks what happens to the insurance industry in the meantime. If you have to undo, because of invalidity, what you have already done, the insurance industry is in a state of chaos and even more important innocent accident victims are totally, detrimentally prejudiced.

Mr Henderson's suggestion is that if you really intend to go through with this proposed legislation, government of Ontario, get it on to the Court of Appeal as fast as you can before you make it law and let the Court of Appeal test it to see if it is law before you create any chaos. That is Mr Henderson talking.

I know my time is running short. May I just say that you have in your material a letter from a judge and I would love to read the letter and review it with you. I urge you to read this letter. Let me tell you something about the judge and the letter will speak for itself when you read it, but I do urge you to read it.

This judge was involved in the personal injury area as a lawyer and a judge and then subsequently as a commissioner, which is a judge who retires but assists the courts in attempting to get cases settled, for over 60 years. If you ask any lawyer who knows anything about the motor vehicle personal injury field about the experience of Mr Justice Edson Haines, he will tell you, "A highly experienced man," and that is an understatement. I urge you to read his letter.

What Mr Justice Haines is saying is that the threshold is niggardly, that it provides cheap benefits and that it is outrageous—I am paraphrasing here—that the province of Ontario in Canada, and we are talking now about the richest province in this country, would come up with a scheme that would deliver the chintziest, cheapest benefits to innocent accident victims. That is

what we are talking about. That is what Mr Justice Haines is talking about.

Ladies and gentlemen, innocent accident victims to put it bluntly will be thumped, whacked and boiled by this particular threshold.

I want to go on to something else very quickly and then if I have time for questions I would certainly be glad to receive them. There are some things I have to clear up. First, I was told today that you had a gentleman discussing the New York threshold and what is going on in New York. As I understood his evidence—I did not hear it but I was told this—he said that what is going on in New York is perfect and maybe we could emulate that.

There is one big difference. You have to read the New York threshold. The New York threshold is not a quarter as stringent as the threshold you are proposing. The New York threshold does not discriminate between emotional or physical. The New York threshold allows a person to claim compensation for his loss of income regardless of whether he passes the threshold or not. Further, the New York threshold does not require an injury that must be serious, permanently.

Read the New York threshold. To put it bluntly and in the vernacular, it is a piece of cake compared to what you are talking about here. A New York threshold would not eliminate 90 to 95 per cent of the claims. I do not really disagree with that gentleman. If you people are searching for a solution, I am not advocating this, because frankly we think thresholds are bad and that they are evil in nature by their very embodiment, but if you are looking for some type of threshold go ahead and consider the New York threshold. I can tell you one thing: You will get less complaints from the public under a New York threshold than you will under what you are talking about.

The other thing is this, and I have to raise it: I am a lawyer and I have heard the government, on side with the insurance industry, screaming about lawyers' fees, \$500 million. What utter poppycock. Let us get serious. Mr Justice Osborne looked into the question of lawyers' fees. The Ontario Automobile Insurance Board looked into the question of lawyers' fees. What they found was simply this: It is not lawyers' fees. There are no great savings out of lawyers' fees in the threshold system. The only savings you are going to get, if you are going to get any, are off the backs of innocent accident victims because you are reducing substantially the benefits paid to innocent accident victims.

I am not saying that; the board said it and Mr Justice Osborne said it. In any event, listen, if lawyers' fees are the problem, then regulate the lawyers' fees. Do not hurt the innocent public.

One other thing, Mr Elston—I am sorry he did this because I know he really did not mean to—and the insurance industry have accused the Committee for Fair Action in Insurance Reform of putting a misleading ad in the newspaper. Outrageous stuff, you know. That is really quite slanderous stuff because the point is that the ad they were referring to, and I do not even have time to go into it, was not misleading. It was absolutely correct under the regulations as printed by the Queen's Printer in September 1989. The ad was perfectly correct.

Subsequently, probably on account of the ad, the government, not through the Queen's Printer but privately, puts up another regulation, November 1989, and amends the regulation making the ad incorrect, but probably it is the ad that made them amend the regulation. Now what they say, and it is outrageous, is, "That ad is incorrect." Well, of course it is incorrect when you look at the subsequent regulation. It was correct when you looked at the original regulation. The real travesty of all this is that it was probably our ad that made the government change the regulation. Shame.

Gentlemen, I know this is a partisan committee. I can only implore you on behalf of innocent accident victims to shake off partisanship, as difficult as it must be, and at the very least recommend that a reference as to the constitutionality be held prior to the passage of any such legislation. Get the government to please produce the information we are asking for. Produce the information, please. Let's look at the information. What are you hiding? Stop this threshold and save the innocent public of Ontario.

Thank you. I am open to questions if there is any time.

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The Chair: I can allow up to 10 minutes, so three minutes, Mr Runciman, Mr Nixon, Mr Sola and Mrs LeBourdais.

Mr Runciman: Thank you, Mr Mandel, for the testimony. I have to share your concerns about the constitutionality and how the government is handling this, and the prediction that you have made and that the eminent litigator you quoted, Mr Henderson, made, but I am not very optimistic given my experience with this government in dealing with the auto insurance question.

I sat through the justice committee hearings on Bill 2 establishing the Ontario Automobile Insurance Board and dealt with the question of risk classification change. Witness after witness testified that it was going to create a chaotic situation, that senior citizens, women, etc., were going to be faced with automobile insurance increases of up to 80 or 90 per cent if they went ahead with this risk classification proposal.

The government forged ahead with that proposal, despite all the warnings, despite all the evidence that it was going to create a chaotic situation. What happened? Indeed that occurred. When the board subsequently set the rates based on the new risk classification system, we were looking at those kinds of significant increases, and once it was dropped on the minister's desk, as usual he panicked and flew off into product reform.

Now we are faced with this situation. This government has been flying by the seat of its pants from September 1987 when Mr Peterson made a promise that was a blatant—I hate to use the word, and I am going to be chastised by the chairman and I will withdraw it after he chastises me—it was a blatant lie. I withdraw that, Mr Chairman, because it is unparliamentary.

The Chair: Thank you. It saves me intervening; one minute.

Mr Runciman: In any event, I am not optimistic that it is going to occur, but I hope they do follow the advice of yourself, Mr Henderson, Justice Haines's, etc.

I have very little time. There is a comment in here on the minister's opening statement. I do not know how they have the gall, but there is apparently no embarrassment on that side of the House. They are talking about, "This loose coalition of special interests"—referring to your group—"directed by a group of personal injury lawyers, has studiously avoided any mention of what its proposals would cost the average motorist."

How they can have the gall to say that when they cannot produce, are refusing to produce their actuarial studies to justify the kinds of figures they are floating around—they are saying, "We estimate maintaining the status quo would result in an average increase of 30 per cent to 35 per cent." I am wondering if you would like to respond to that particular comment by the minister.

Mr Mandel: First of all FAIR, to set the record straight, is more than just lawyers. There are many groups that belong to FAIR. There is no doubt that lawyers acting for claimants and

lawyers acting for insurance companies are involved with FAIR, and very seriously so, and there is no doubt that FAIR is driven in large part by lawyers. No one ever denied that and everybody has been up front about that, but there are many other groups that have nothing to do with lawyers that do not like the legislation and are part of FAIR.

In regard to whether we proposed a plan, we did propose an alternative plan, months ago. As a matter of fact the government asked us to price the plan that we were proposing. As a matter of fact the government not only asked us to price the plan, but it told us the actuary to use and we went ahead and did it, spent money, used the actuary, and the actuary came up with savings of around 15 per cent. People would have had their rights to claim compensation; they would have had all sorts of rights. That 15 per cent had nothing to do with added things that are going to be done, tort reform and things like that, where there would be greater savings, which we would have supported.

The government cut off all negotiations with us. They got a good report, from our point of view, from an actuary they asked us to retain and cut off all negotiations. The government said to us—to be perfectly blunt it was the assistant deputy minister to Mr Elston, so you will know exactly who I am talking about. He said that they did not want to meet any more, that they had more information. This was before we even applied under the freedom-of-information act. We asked: "What information? What further information have you got?" They said, "We'd rather not tell you." I said, "We gave you all our information." "We'd rather not tell you."

Now I am not blinking. I am looking everybody in the eye and I am telling you that is what happened. And I have to be calm and cool? Why will you not tell us? Because you know if we look at it we will show you where it is wrong, just like we showed you where your information, or the insurance industry's information, was wrong before the Ontario Automobile Insurance Board. What are you hiding? What is this anyway? Are we out to help the public of Ontario or not? So what is the response? Bash the lawyers. If we bash the lawyers, it will throw the public off but do not tell the public that the innocent accident victim is going to get whacked and hacked. Do not tell them that. That is what is happening. That is the game plan.

Mr J. B. Nixon: Mr Mandel, thanks for appearing before us. Earlier today we had some testimony from Professor Michael Trebilcock of

the University of Toronto law school, where Professor Jack Carr teaches on a part-time basis as I understand it—full-time at U of T but part-time at the law school.

Mr Trebilcock made some interesting points. You talk about deterrence and the deterrent effect of tort. He pointed out that the only study you rely on, the Rose Ann Devlin study of Quebec, was done during a period when premiums were equal for all. In other words, the high-risk driver paid the same rate as the lowest-risk driver. His only conclusion was that of course accident rates go up but not because of no-fault; rather because everyone is paying the same premium and that allows a lot of dangerous drivers on the road. If you put a high-risk driver into a high-premium category, your accident rate comes right down whether you have tort or no-fault.

Professor Trebilcock also went on—I put this to you—to say that under tort systems generally throughout North America, 50 to 60 per cent of the people do not get compensated at all. The ones who win a tort suit, the 40 to 50 per cent who win, do get compensated. So we asked him, “Could we design a system where everyone got compensated and you had the right to sue and you had no-fault benefits?” He said, “Of course you could, but the problem is costs would go through the roof.” You know as well as I do that the public of Ontario is saying, “The last thing we want is the premium costs of automobile insurance to go through the roof.”

Mr Mandel: First, when Professor Carr was testifying, it would have been nice if Professor Trebilcock had testified first so you could have addressed that to Professor Carr, because I can tell you—

Mr J. B. Nixon: I had the same problem, if you recall, when Carr went after me.

Mr Mandel: I only have a minute. I should say this: Professor Carr sat on the thesis, the oral examination of Professor Devlin, as she is now. There was another study done, which unfortunately you either do not know about or Trebilcock did not tell you about, that took into account the flat rating, by Rose Ann Devlin. Having taken into account the flat rating, it was still analysed that more accidents were caused in Quebec as a result of the no-fault. This was all analysed in front of the Ontario Automobile Insurance Board.

What you are raising with me, people were under cross-examination for hours discussing. That was all taken into account. The Ontario Automobile Insurance Board, having taken

everything you said into account, found that accidents will increase.

Next, this 50 to 60 per cent who do not get compensated: Read that correctly. First, you have to analyse the studies he is talking about, and second, is that an American study or a study out of England you are waving there?

Mr J. B. Nixon: United States Department of Transportation.

Mr Mandel: Thank you. You see, what you have to worry about there is this: First, there are a lot of people who do not bother to sue or who do not bother to claim compensation. They just do not bother. Second, in many states in the United States of America they do not have what is called contributory negligence, so that if you are found one per cent negligent you are out of court.

Fortunately, our province is much more humane than that and has been for years, and the Americans are following our lead. The Americans are saying, “You know, if somebody is 25 per cent responsible and the other person is 75 per cent responsible, then the person who is 75 per cent responsible should pay 75 per cent of the damages.” In a lot of states in America they do not have that rule. They are now coming around to following what we here in Ontario do and are proud of doing. Fifty to 60 per cent: To try to relate those figures to Ontario is absolute nonsense. Those statistics are just outrageous if you try to apply them to Ontario.

Another person who could really have been questioned on that would have been George Priest. He would have set the record straight for you immediately.

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The other thing you said was, the last thing we want are costs to go up, and I want to address that for a moment because we absolutely support the principle that costs should not go up. FAIR and other groups support the principle that they do not want costs to go up. Of course they do not want costs to go up, but be careful here. Do not panic and do not rush. You know that the insurance industry is a very cyclical business: up, down, up, down.

Gentlemen, I implore you to study very carefully the last year of the insurance industry. It has gone down. This is the IBC talking. The IBC now has reported that its losses have gone down from \$400 million to about \$93 million. Those losses have gone down from \$400 to \$93 million. This is the IBC. We have not even checked this. This is what it says.

I should tell you, when they testified in front of Kruger on the rate hearing, they showed their

losses were—I forget what the number was—let’s say 5X and Kruger found no, it is only 1X. If they are still adopting the same philosophy and their losses are only \$93 million, they are probably showing a profit. But let me accept their figures. Let me accept the IBC’s figures.

If the IBC is only losing now \$93 million, the insurance industry is only losing \$93 million—I do not want the insurance industry to lose money—and you are giving them \$140 million or \$143 million out of the tax grab that has been referred to and, forgetting OHIP, they just made \$50 million without one change.

You have on the books now tort reform. For those of you who do not know what tort reform is, it is amendments to law designed to reduce damages. That tort reform will reduce and save the insurance industry hundreds of millions of dollars. That is without you doing anything about threshold.

The Chair: Mr Farnan for three minutes.

Mr Mandel: Do not panic is what I am saying to you.

Mr Farnan: The question I have to ask you is really, I suppose, a political question to see how you perceive it. I cannot help but feel that the die is cast. The experience I have had, as a member of committees over the last two and a half years of majority government, whether it has been Sunday shopping or Meech Lake, is that there has been absolute unanimity among the back benches of the government party in following party discipline.

As I watched the proceedings unfold, we are into almost a ritual where a delegation that comes along which is supportive of the legislation is entertained almost with a sigh of relief on behalf of the government members and a delegation which would question the legislation is challenged.

I think experience tells us that we are not going to have Liberal backbench members of this committee changing. I hope I am wrong. Maybe at some stage in the history of this government an individual member of the Liberal Party will make that courageous stand. But I do not think, unless we get a directive from above, from the Premier’s office, we will get a change in this direction.

Is there anything you can suggest that is going to make this transformation? I think we really are at a stage of ritual.

The Chair: In under a minute.

Mr Mandel: I have implored the Liberal members of this committee not to follow partisan

rules. I can guarantee that if the government passes the legislation in its present form and puts it into law, it will be attacked constitutionally. You have my guarantee on that.

We can also guarantee the government that anybody who has a serious injury and walks into a lawyer’s office—and I do not care if it is in Peterborough, Sudbury, Ottawa or Toronto, or wherever—you can rest assured that if the lawyer has to tell that seriously injured person, “Sorry, there’s nothing we can do,” and the person says, “What do you mean? I’m terribly injured,” and is told “I know, but you don’t beat the threshold. We don’t think you beat the threshold. Sorry,” we are going to tell them who to write to. We are going to tell them who to telephone.

The Chair: On behalf of the ladies and gentlemen of the committee, thank you very much for your presentation.

Now we have the Ontario Teachers Insurance Plan group. Gentlemen, if you would identify yourselves, you have a half-hour for your presentation. The clerk has distributed it. If I can offer any advice and guidance, if you could keep it to 15 minutes for the presentation and then 15 minutes for some comments, questions and discussion, we would appreciate it. The next half-hour is yours.

ONTARIO TEACHERS INSURANCE PLAN

Mr Tisi: My name is François Tisi. I am the chief executive officer of the Ontario Teachers Insurance Plan. To my left is Randy McGlynn, who is an employee consultant with the Ontario Teachers Insurance Plan. To my right is Doug Knott, and he is a consultant with the Ontario Teachers Insurance Plan.

OTIP/RAEO (Ontario Teachers Insurance Plan/Régime d’assurance des enseignantes et des enseignants de l’Ontario) is a nonprofit trust established in 1977 by the five teacher affiliates of the Ontario Teachers’ Federation. The main objective of OTIP/RAEO is to provide the best insurance plans possible at competitive rates for active and retired educational employees.

In 1990, OTIP/RAEO manages more than \$47 million on behalf of its members and provides long-term disability insurance to approximately 50,000 employees of the province’s public and separate school boards. In addition, OTIP/RAEO provides life insurance, retired employees’ insurance and home and automobile insurance.

We appreciate having this opportunity to appear before the standing committee on general government in order to indicate to you a number

of concerns we have with respect to the implementation of Bill 68.

OTIP/RAEO is primarily a long-term disability insurance specialist. The purpose of long-term disability is to provide disabled educational employees and their families with income protection while they recover from an injury or illness. In addition to a monthly income benefit, OTIP/RAEO protects the retirement pension of disabled teachers by contributing a payment to the Ontario Teachers' Pension Plan Board, formerly the Teachers' Superannuation Commission. This contribution is based on the salary earned at the time of incurring the disability.

Teachers negotiate long-term disability insurance plans into their collective agreements along with a variety of other health plans, salary schedules and other monetary allowances, retirement incentives and sick leave provisions. They negotiate these provisions knowing their own current economic situation and needs as well as the provisions that exist elsewhere to protect their income.

It is very important to emphasize that the collective agreements of all educational employees have been negotiated knowing that automobile accident insurance policies would protect their economic futures in certain ways.

It should also be noted that the teachers' pension plan permits them to buy back employment time lost due to illness or accident. A teacher not able to return to work uses up accumulated sick leave and is either placed on a leave of absence by the employing board or dismissed. This places teachers who do not have long-term disability insurance in a particularly vulnerable position as far as their pensions are concerned.

OTIP/RAEO requests the committee to consider a number of recommendations which in our opinion will alleviate the economic rearrangements facing the insured as a consequence of this legislation.

The three issues of concern which OTIP/RAEO wishes to place before you are the following: (1) income replacement; (2) the omission of emotional and psychological injury from the threshold; (3) the insufficiency of the supplemental medical care, rehabilitation and long-term care.

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Income replacement: Under section 158 of Ontario's Education Act school boards are permitted to establish sick leave credit plans and systems of sick leave credit gratuities, provided the gratuities do not exceed either half the

number of sick days accumulated or half a year's salary.

In 1988-89, according to the numbers obtained from the Education Relations Commission, 161 collective agreements governing teachers provided for the payment of a retirement gratuity at the legal maximum. A further 74 collective agreements provided for a gratuity based on a lesser accumulation.

The Education Relation Commission's statistical information reveals that in addition to the sick leave programs, many collective agreements have long-term disability plans. In 1988-89, 228 elementary and secondary teacher agreements had long-term disability insurance plans. Of these, 153 or 60 per cent were fully paid for by the teachers. Of the remainder, 39 or 15 per cent were paid fully by the employers and 36 or 16 per cent had other cost-sharing arrangements.

Bill 68 proposes that the accumulated sick days be used while recovering from the injury which effectively wipes out not only the retirement gratuity, but also eliminates protection from future illnesses or injuries which might occur when the injured person returns to employment with the school board.

Educational employees and school boards have structured their collective agreements in such a way as to provide and maintain sick leave programs. These not only protect the employees but affect the day-to-day operation of the school system. OTIP/RAEO proposes that these arrangements which have taken years to develop be preserved through amendments to the proposed Bill 68.

We propose that the legislation be amended to give the injured individuals the option of using or not using all or a portion of their sick leave in the event of a disability caused by an automobile accident. In other words, the individual would have a choice: use sick leave or receive the Ontario motorist protection plan's income replacement.

The alternative would be to permit the individual to collect the OMPP accident benefits until the long-term disability insurance benefits begin. This would protect the sick leave plan negotiated in the collective agreement and would protect the individual against future illness.

OTIP/RAEO is of the view that employees who have taken every step to maintain their good health should not have their accumulated sick leave days wiped out by an accident, particularly one that was not their fault.

OTIP/RAEO recommends that there be a differentiation in automobile insurance to reflect

premiums paid by persons who purchase long-term disability protection, whether through a group program or through an individual policy.

Currently, section B, no-fault accident benefits are charged on a per-vehicle basis with a premium of \$30 to \$35 per year. Under the system proposed by the Ontario motorist protection plan, this premium will increase on a range between \$125 and \$150 per year. OTIP/RAEO recommends that there be a 25 per cent reduction of the income replacement component of the automobile premium. This would reflect the transfer of income replacement responsibility to the long-term disability plan.

A derivative of this recommendation is to permit the use of sick leave in combination with the OMPP income replacement amount to make the total equal to the income lost.

Omission of emotional and psychological injury from the threshold: Unfortunately, the proposed legislation does not recognize that psychological injuries or impairment may be incurred through automobile accidents and be serious enough to prevent a person from returning to work for a brief period of time or permanently.

OTIP/RAEO has had a great deal of experience in the area of disability and knows that mental stress or emotional dysfunction can and does prevent persons from performing their jobs. As the research and statistics reveal, educational employees work in an extremely stressful environment and these stressful environments cause disabilities.

In the opinion of OTIP/RAEO, access to court action should be permitted to persons who suffer serious psychological injury and impairment in the same manner as it is granted to persons who suffer serious physical injury or impairment. To this end, OTIP/RAEO concurs with the recommendations made in this area by many groups that have appeared before this committee, in particular the Canadian Mental Health Association and the Ontario Psychological Association.

Insufficiency of supplementary provisions: OTIP/RAEO is of the view that the amounts established by the legislation for supplementary medical care and rehabilitation and for long-term care are low in amount and subject to continual erosion of purchasing power because they are not indexed to increases in the cost of living.

From our experience we recommend that there be no cap on the rehabilitation clause and certainly no time restrictions. Furthermore, we recommend that provisions be included in the legislation dealing with income earned during the

rehabilitation period and that these dovetail with the income replacement provisions in the supplementary rehabilitation provisions.

In support of this recommendation, we note that income earned during rehabilitation, along with supplemental benefits, acts as an encouraging factor during a person's recovery period. OTIP/RAEO has been very successful with its rehabilitation efforts, which are operated in conjunction with the long-term disability programs.

The economic benefit to the insurer of an early return to work of the insured is a positive return on the insurance premium. For these reasons, OTIP/RAEO encourages the committee to amend the legislation and remove both the cap on rehabilitation and the time limitation.

Disability income contracts provided by life insurers and casualty insurers contain contractual provisions dealing with rehabilitation services and the earning of income during the rehabilitative period. These benefits are encompassed in disability contracts and it is our recommendation that the OMPP work with these insurers to permit a sharing of the responsibility and cost of rehabilitation. This can work to the best interests of the disabled consumer and reduce the cost charged to the automobile insurer. In addition, it would permit the uncapping of the amounts proposed for supplemental medical care and rehabilitation.

The recommendations of OTIP/RAEO to the standing committee on general government regarding Bill 68 are as follows:

1. That the insured have the option of receiving either the OMPP's income replacement benefit or the insured's own sick leave benefit.

2. That the insured be permitted to receive the OMPP's income replacement benefit until the insured's long-term disability insurance benefit begins.

3. That the insured be permitted to maintain the same level of income received prior to the accident by supplementing the OMPP's benefit with a portion of the insured's sick leave.

4. That the premium for automobile insurance be reduced to recognize that an LTDI plan is covering the insured.

5. That there be a 25 per cent reduction in the income replacement component of the automobile insurance premium for those who have LTDI.

6. That the one-week waiting period be eliminated.

7. That the income replacement amount of \$450 be increased and indexed to increases in the cost of living.

8. That serious psychological injury or impairment be permitted to pierce the threshold.

9. That both the ceiling and time limit placed on the supplementary medical care and rehabilitation be removed.

10. That the OMPP financially support rehabilitation income benefit and that it not be reduced by income earned by the insured during rehabilitation, provided the insured's prior level of income adjusted for inflation is not exceeded.

We appreciate the opportunity to address this committee and thank you.

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The Chair: Thank you for your very specific recommendations. I have Mr Farnan and Mr McClelland. Mr Farnan, five minutes.

Mr Farnan: I am going to give you the five minutes to speak as you wish to the question I will pose to you.

It appears to me that this is regressive legislation for teachers. Not only is it regressive legislation for teachers, but it is retroactively regressive legislation for teachers. When I say "retroactively," I mean that it eliminates benefits accumulated over many years.

Were you discussing this with teachers and explaining this to them—and I think this is what is important for this committee and the public to hear—teachers of Ontario who, as you point out, have taken every step to maintain their good health, that these teachers then, through their accumulated sick leave, have in fact really been working to contribute to the future profits of Ontario's insurance industry? Would you elaborate on that theme, please?

Mr Tisi: Basically, the point that you have just made is one that we made in our presentation on the fact that most of the teacher organizations in this province, most of the local collective bargaining groups or the local collective agreements, have accumulated sick leave within their collective agreements. As I mentioned, this is part of section 154 of the Education Act.

Basically what we are saying is that these teachers who have a considerable bank of accumulated sick leave, with this piece of legislation, if they are injured because of an accident, and as I mentioned, because of an accident that may not be their fault, may have to use up all of their accumulated sick leave.

I did mention that it will have an effect on the retirement gratuity, a plan that is also provided for in the Education Act. More important, when these teachers return to gainful employment, return to teaching, if they have wiped out their accumulated sick leave, all they would have is

the 20 statutory days as indicated in the Education Act. So because of an accident that is possibly not even their fault, they will have potentially wiped out all of their accumulated sick leave.

Mr Farnan: In the bargaining process, when one is negotiating, I suppose often in the mean and lean times of negotiations, people attempt to take away benefits that have been previously negotiated. But, gee, it is not often you come across a situation where an employer wants to claw back something that has been granted in the negotiating package for 10 years. In fact, I think through this legislation the government is going to claw back from teachers benefits that they had 10 years ago and which have accumulated steadily over the years.

This is a most draconian approach in terms of dealing with any group, whether it be teachers or any other type of employee. I think it is very important for the government members to reflect on that. Is this really what you want to do, and if indeed you are intent on such a mean-hearted course, do you want to go back 10 years to be pulling back these benefits?

Thank you very much for the presentation. I enjoyed it.

Mr McClelland: I will try to focus my comments. By way of preface, let me say that one of the things I find very compelling about Bill 68 is the emphasis on trying to put people in an economic position that is significantly better than they possibly may be in under the tort system. There is clearly at issue some discussion, and some valid discussion, with respect to the nonpecuniary loss, ie, pain and suffering and that element that will be removed.

You raised some very legitimate concerns, I think, with respect to your membership, particularly as outlined in the first three recommendations. In terms of clarification, there are some things that are important to understand and I want to explore, perhaps with the assistance of the parliamentary assistant, what some of those options are.

I would put to you that perhaps things are not as bleak as you might think they are with respect to the accumulated sick leave benefits that you have ably obtained on behalf of your membership. I will ask the parliamentary assistant to amplify anything I might say and correct me in terms of my understanding of what Bill 68 provides.

My understanding is that in fact members would be entitled to exercise an option with respect to their benefit, provided that was pro-

vided within the context of each collective agreement. I realize that is somewhat problematic and will make it an issue with respect to future negotiations with collective agreements, but the essence of that is that it provides your members with an option of looking at their banked sick leave, to use that or to utilize their immediate no-fault benefit, having regard to the particular circumstances at the time, and making perhaps as well as they can a value judgement, an informed judgement, with respect to the duration of their loss of income. There will be some personal decisions that may have to be made in that regard.

The other thing I want to indicate which I think is very important is, you talk about maintaining the same level of income, particularly your suggestion 3. I put it to you that there are tremendous options with respect to some of the benefits you may be able to rework, if you will. Bill 68 clearly provides the option to top up a loss of income from the equivalent net of \$30,000 that is provided under no-fault.

Mr Tisi, in response to your very useful and helpful suggestions, which I appreciate, particularly the first three in terms of the benefit and income replacement, essentially what I am saying is that there are some options currently available. I clearly recognize that part of it would fall back on you as representative of your membership to incorporate some other options that would give further benefits to your membership.

Can you add anything to that, Mr Ferraro?

Mr Ferraro: There is not much I could add, save and except that you are correct, Mr McClelland, in that many collective agreements, particularly in the public sector, if you will, with school boards and government agencies, will allow the option of leave without pay, in which case the OMPP income replacement would be substituted, if you will. Mr McClelland is right. In cases where the income is not substantively high enough, OMPP could be used to top up the 80 per cent of the gross income.

I guess I would just finish by saying that we have certainly heard your presentation and those of others, but the response, quite frankly, as indicated in Osborne, is that the collateral source rule applies. At the very least, in your case you have an option and I must admit in many cases there is no option. The reason of course is one of cost containment, as recognized by Osborne.

Mr Tisi: I guess when I look at the proposed Bill 68 as we have it, with regard to what I believe you are referring to, I do not see those

options the teachers will have. Are we referring to some possible amendments? Are we referring to some regulations?

Mr McClelland: No. I think that is important.

The Chair: One minute.

Mr McClelland: With respect to that, perhaps Ms Parrish could help out.

Mr Ferraro: I am going to let our legal whiz can comment on that just so that you are not misled.

Ms Parrish: I should say that the legislation, both in the draft regulation and in the bill itself, makes a distinction between long-term disability plans and sick leave plans. What it says about a long-term disability plan is that there is a deduction against either your weekly benefit or your tort award if the long-term disability plan is taken or if it is available, which means that if you have it, you have to take it before you can come back against either the tort system or the weekly benefits.

With sick leave, it says you deduct sick leave if you take it. If you have it but do not take it, it is not deductible. If a person was in a situation where he could apply to his employer for leave without pay, then he would be entitled to the full \$450 a week from the OMPP. Then when he comes to the period, which I believe in most collective agreements for teachers is something like 60 days, he then moves over into his long-term disability plan.

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At that time, the person would receive payment from his long-term disability plan. If it was not equal to 80 per cent of his income, he would be entitled to top up to 80 per cent. He would be able to take the long-term disability plan and he would be able to top up from OMPP 80 per cent of his gross income. During the period of sick leave, if they were able to get leave without pay, they could get full OMPP. They would not be forced to take their sick leave. They would have that choice.

I realize that in some collective agreements, you can only take leave without pay with permission; that is, it is discretionary. You have to apply for it and have it given or not given.

Mr Tisi: So basically what you are saying is that according to the proposed legislation, after the first week, the teacher would have the choice.

Ms Parrish: That is correct.

Mr Ferraro: If it is in the collective agreement.

Ms Parrish: It depends on the collective agreement. Some collective agreements allow you to take leave without pay. With others, it is discretionary.

But, yes, after the first week the teachers could, for example, apply to the school board to take leave without pay, at which time they would be entitled to \$450 during the entire sick leave period. When they go on to long-term disability, they are entitled to their long-term disability payment, which is whatever it is topped up.

Mr Tisi: So basically at this time, if it is permissible by the board or the employer or if it is within the collective bargaining process, you are saying the same thing.

Ms Parrish: I understand it varies from collective agreement to collective agreement.

Mr Tisi: Yes. That is fine.

The Chair: Mr Jackson for five minutes.

Mr Jackson: I will not need five minutes. I guess I am concerned with the fact that you are here as well in a growing chorus of professional groups who are concerned about the point you raised. Many people are now beginning to see that where the Premier (Mr Peterson) had a specific plan to lower auto premiums during the last election, he had instead a specific plan to lower benefits. Have you had any opportunity to cost out with some examples to show us the financial impact of what you are concerned about with respect to the adjustment in benefits?

Mr McGlynn: Just a clarification.

Mr Jackson: Well, have you done any economic impacts on, say, a teacher to whom the following might occur on a basic grid and a basic level of benefits and here is what happens to him? My supplementary would also deal with, if you were looking at modifying your current benefits plan to compensate for your understanding of what the potential losses are—because that is what we are hearing—are you undertaking any studies to look at providing additional add-on benefits to top back up to a safer, more equitable level?

Mr Tisi: With regard to the long-term disability—and as I mentioned in the brief, we are long-term disability specialists—since the proposed legislation has been out, we have had a lot of calls from people questioning. As the woman said, there are various waiting periods and a lot of them have a 60-day waiting period. There are groups out there now who have longer than 60-day waiting periods, who have called us to cost what the impact is on a lower waiting period in order to make sure they are not eroding all of

their accumulated sick leave because of the way the legislation is proposed.

Other than that, on costing, we were mainly concerned about the individuals who, as mentioned in the brief and as brought forward by Mr Farnan, are healthy, have accumulated their sick leave and therefore, if they have to wipe it out, which is the understanding we had in looking at the bill—maybe there are regulations or amendments that will make this different. But we were really concerned about the effect on these individuals if they got into an accident.

Mr McGlynn: If I might expand on that in the area of rehabilitation, we are concerned in that area that there could be rehabilitation exercises going in two completely different directions and therefore working at loggerheads and not improving the position of the disabled person, but rather undermining it.

What we proposed was that there be co-ordination of benefits and activities between the casualty or life insurance company, if it exists, providing long-term disability income and the auto insurer so that there is singleness of purpose and cost-sharing. With those funds that would be shared, we proposed that there was then an opportunity to take the caps off, and the time restrictions, because 10 years might sound like a long time until you are working with somebody who is severely impaired. Then it may not be time enough.

We are saying there is a source of funds that I do not believe people were aware of or conscious of when they were singly focusing on automobile insurance that you can turn around and take advantage of and use to improve the rehabilitation part of the program.

The Vice-Chair: Our next group is the Ontario Society of Occupational Therapists, with their president, Pamela Sniderman of the Hamilton chapter. Welcome.

I would just like to advise you that you will have a half an hour, and we would like to suggest that you spend 15 to 20 minutes for your presentation to allow us time for questions. Ms Sniderman, perhaps you would be good enough to introduce the other individuals at the table.

ONTARIO SOCIETY OF OCCUPATIONAL THERAPISTS

Ms Sniderman: Good afternoon. I am, as you have already said, Pamela Sniderman. My colleagues are Mrs Jill Trites and Mrs Rhoda Reardon.

The Vice-Chair: Could I ask you just to speak up a little more so that everyone can hear you clearly.

Ms Sniderman: I will certainly try to.

We represent occupational therapists in Ontario. We represent the Ontario Society of Occupational Therapists, of which I am a branch president.

There are approximately 2,000 occupational therapists in Ontario. We work in diverse settings and with all age groups.

We strive towards the restoration of function and the ability to maintain an independent lifestyle for all of our clients. We treat those with physical and mental impairment, whether as a result of disease, accident or developmental delay. Occupational therapists are a vital part of the rehabilitation process of all accident victims. As such, we have concerns regarding Bill 68.

We would like to commend the government for its attempt to improve the law related to the motor vehicle accident insurance. Many areas have been changed to benefit the victims of the said accidents. However, we feel that the overall concept and certain specific areas have flaws that we wish to address at this time.

Mrs Trites: It is our understanding, in review of Bill 68, that one of the primary benefits of the proposed system lies in enhanced medical rehabilitation and weekly benefits, and we would certainly agree that improvement in these areas is warranted. However, it is our concern that both the spirit and letter of this legislation fail to demonstrate an understanding of the underlying principles of rehabilitation.

Rehabilitation must begin with the belief and hope that improvement is both possible and desirable. Hope is critical to the process of healing. A spinal cord injured person needs to believe that a return to normal life is possible, perhaps that he may some day walk again. We know that the psychological and emotional variables involved are equally as important as the physical variables.

The first concern then, when we reviewed this legislation, was with the threshold statement which requires that an individual must prove that he or she has suffered a permanent, serious impairment in order to sue. It is reasonable to believe that for many injured persons eligibility to sue will be a primary concern. The need to establish permanent impairment may interfere with an individual's ability to participate in the process of rehabilitation.

We are concerned that we, as therapists, may be forced into the either/or position of endorsing a person's right to sue with a statement of permanency or encouraging hope of recovery. We would suggest that perhaps the threshold

statement wording could be changed to better reflect an understanding of impairment: rather than "permanent serious impairment" perhaps "continuing serious impairment."

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With respect to the threshold statement, we would also like to state our concern that emotional and cognitive/perceptual disability is not included in this definition. It has been suggested that the present wording implies inclusion of injuries such as head injury. However, these can be devastating disabilities and, for clarity, deserve to be expressly included within the wording of the statement. It is not sufficient to leave this to interpretation.

The government, with this legislation, has an excellent opportunity to initiate a plan of benefits and compensation which is progressive and positive and meets the needs of insurance companies and injured parties by being sensitive to what rehabilitation is and what it requires. This proposed plan is not it. Better models of benefit systems do exist.

The tort system that we now have is adversarial. It is our fear that the system as proposed here will also be adversarial and that it is naïve to believe it will not be. The difference will be that injured parties, whose physical and emotional resources are already depleted, will face a large, complex bureaucracy, lacking even the power and representation afforded them by legal counsel. Because of this, the onus must be on the authors and supporters of this legislation to ensure that the needs of innocent victims are met and protected.

It is also naïve not to recognize that adversarial relationships breed abuse on both sides of the coin.

Insurance companies have admitted that their primary motivations lie in saving dollars. This now means saving rehabilitation dollars. To date, this has been accomplished by refusing and delaying rehabilitation requests. Allowing the insurance company to determine what are reasonable expenses, requiring physicians' statements outlining the need for each and every rehabilitation expense and continuing use of independent medical examinations all increase the opportunity to refuse and delay.

Furthermore, under this proposal, rehabilitation is not included under items which must be paid up front, pending resolution of any dispute. Delay in approving rehabilitation programs becomes inevitable. Since insurance companies are required to pay only what is not available from any other source, we are concerned that

insurance companies will prefer to have clients sitting on long waiting lists for publicly funded programs, rather than spending money on private programs.

Equally, there may be abuse in this system by individuals who fear that improved function may result in termination of weekly benefits. The proposed system is an all-or-nothing proposal with respect to work. It should be encouraging and recognizing volunteer activities, part-time work and periodic work as important stages in return to function. Many long-term disability packages now provide for continued partial income supplements in the event that an individual can work, even at reduced capacity. For example, if I can work part-time and make \$300 a week, the policy would top me up to \$450. It may be useful to consider some of these other benefit plans before formalizing this legislation.

It is our belief that the current proposal creates disincentives to rehabilitation if any attempt to return to work in a reduced capacity results in benefits ending.

We are concerned that Bill 68 does not include a specific definition of what rehabilitation will include. To date, insurance companies have interpreted rehabilitation as "return to work." We feel the definition must be broadened to "return to function." It must recognize programs and services which deal with quality of life as equally valid concerns. All rehabilitation does not end in the workplace.

We believe that the intent of this legislation may be to provide comprehensive, easy access rehabilitation. However, unless this is elaborated and clarified specifically within the wording of the regulations, we are concerned that the new program will be little improvement over the old.

In conclusion, we would encourage this committee to review the proposed plan specifically with these points in mind:

A clearly worded, broadened definition for rehabilitation should be included.

Access to rehabilitation needs to be less arbitrary and restrictive. Any treating health professional should be able to make rehab recommendations within the scope of his or her practice. Guidelines should be clearly established as to what is not a reasonable expense to avoid confusion, and in the event of a dispute, the insurer should be expected to pay the expense, pending resolution of the dispute.

We are concerned about the adequacy of some of the proposed benefits, and my colleague will discuss that.

The benefit package should not include inherent disincentives to rehabilitation. Provisions for allowing part-time and periodic work programs without jeopardizing weekly income benefits are essential. A system which requires that a client remain totally disabled in order to maintain benefits is regressive and provides only barriers to rehabilitation.

We would also appreciate some clarification as to who are appropriate individuals to make rehabilitation decisions. There has in recent years been a proliferation of independent rehabilitation consultants hired by insurance companies, but there are currently no standards for the qualifications of these individuals. Critical decisions concerning a client's rehabilitation should not be made by unqualified persons and the insurance industry must take responsibility in ensuring this.

Ms Sniderman: We would also at this time like to call the committee's attention to the following specific sections of Bill 68. The draft from which these items have been copied was dated 13 September 1989. Subsequent drafts may have changed the numbering system, but we believe the context remains the same.

In part II, under supplementary medical, rehabilitation and long-term care benefits, subsection 7(1), "The insurer will pay...all reasonable expenses to a maximum of \$500,000..." we would like to know who will decide what is reasonable. We feel this decision should not belong to the insurance company alone.

Clause 7(1)(a) refers to the provision of "necessary medical, surgical, dental, hospital, chiropractic, nursing and ambulance services." We feel this wording is exclusionary because of the specific services mentioned. It should be perhaps broad and cover medical, surgical, hospital and community services and therefore allow for a greater variety of services, or should be further specific and include all health professionals such as occupational therapists.

Clause 7(1)(b) refers to the provision of "necessary prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices." This should be expanded to include orthoses and complimented with medical, dental and adaptive devices.

Clause 7(1)(c) refers to the provision of "necessary rehabilitation, life skills training and occupational counselling and training." To reconfirm what Ms Trites has said, in the glossary of terms we would ask for a specific definition of the word "rehabilitation" as in the past this has

been interpreted as return to work, whereas we see it as meaning "return to function."

Subsection 7(2), "For the purposes of subsection 1, the benefit period is the longer of two following periods calculated from the day of the accident and ending on the anniversary of the accident" meaning 10 years.

This time is too definitive and too short. Many of the previously mentioned expenses will still be required following this term. For example, a hearing aid or artificial limb would be needed for life and the insured should be able to claim for these recurring expenses for as long as they are required. Some guidelines, of course, would be necessary for the frequency of the replacement of these devices.

Subsection 7(4), "The insurer, before making a payment for an expense under clauses (1)(a) to (e) or (1)(g), may require the insured person to submit a statement signed by the insured person's medical adviser...." We would appreciate some clarification here on the term "medical adviser." If this represents the physician, we feel that submitting oral requests to the doctor for formal agreement would be both time-consuming and unnecessary. We, as occupational therapists, feel we can prescribe certain equipment and apparatus necessary for the insured's rehabilitation. For example, if a client's balance is poor, prescribing railings on the stairways to prevent falls should not need a doctor's agreement.

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Subsection 7(5), "In case of a dispute concerning the reasonableness of an expense described in clause (1)(a) or (b), the insurer will pay the expense pending resolution of the dispute." This section should also include (c), "the onset of rehabilitation," as any delay in the rehabilitation process is counterproductive.

Subsection 8(3), "The maximum payable per month under this section is the lesser of \$1,500...appropriate to accommodate the needs of the insured person," the maximum being \$500,000. This is the amount of money that is payable for care for the insured persons in their own homes.

With the cost of attendant care at this time, this leads us to believe these amounts, both the \$1,500 per month and the maximum of \$500,000, to be inadequate to allow complete freedom of choice in living arrangements. As it stands, these amounts may force disabled individuals back into the institutions.

Part IV, weekly benefits, with \$450 as the ceiling. If this plan is to be equitable for all individuals, putting such a ceiling on the weekly

benefit does not seem appropriate and adequate. The 80 per cent of income with no ceiling is much fairer.

Part VI, miscellaneous. "The insurer has the right, on reasonable notice, to require a physical or mental examination...by a duly qualified medical practitioner or chiropractor as often as it reasonably requires." This again, as in one of the previous sections, is exclusionary. It should merely state "by a duly qualified health professional."

In conclusion, we would like to thank the committee for its interest in the concerns of the public for the implications of this act. We wish them every success in their endeavours and would be most willing to assist in any further discussion in any way the committee may think appropriate, including the inclusion of an occupational therapist on any committee to define or help assist with the terms "rehabilitation" and "vocational counselling," occupational services of any kind.

Ms Oddie Munro: I would like to thank you very much for appearing before the committee. The question I was going to ask is whether you had prepared amendments or at least the wording, which you clearly have, and I think your offer to assist us in defining from a functional point of view what rehab is would be helpful.

It has been my impression, in questioning various people coming before us that, although their suggestions on rehab were very informative and necessary, we needed to have at least some definition from which to work. I think your idea of restoring, as a premise, the persons to whatever their normal lifestyle was and then working from there, given the amount of the injury, is a good one. I thank you for your assistance.

I would like to ask the committee for clarification on page 3, "rehabilitation is not included under items which must be paid up front pending resolution" of a dispute. It was my understanding that payments for rehab would go forward and then, if there was any need to take back, that would be done.

Mr Ferraro: I will let Ms Parrish respond to that.

Ms Parrish: I think the deputants are correct in pointing out that there is a distinction in the current draft of the regulation between "necessary medical" and "necessary or reasonable rehabilitation." Medical expenses are payable pending the resolution of the dispute; rehabilitation benefits are payable after the resolution of

the dispute as ordered by the mediator or arbitrator or as agreed to between the parties.

If it is a necessary medical expense, a prescription or whatever, then it would have to be paid; but if it were, for example, a vocational rehabilitation program or a life skills training program and there was a dispute as to its efficacy, cost or whatever, that might have to wait. That is what the current draft says.

Ms Trites: Is there any intention to alter that or change that?

The Chair: That certainly would be under consideration by the committee, I think, based on your submission.

Ms Trites: Okay.

Ms Oddie Munro: I wonder if you could expand on why that is important and what kind of abuse or effect that would have on the client.

Ms Trites: I think it has certainly been our experience to date with the present system that, by and large, rehabilitation expenses are questioned and are disputed—

Ms Oddie Munro: Because they are services.

Ms Trites: —because they fall into kind of an undefined broad spectrum, because a lot of times rehabilitation costs are not necessarily return-to-work issues. Therapists have historically found a lot of difficulty when recommending mobility aids, adaptive devices and so on that do not fall within kind of the traditional medical definition. Traditionally, therapists have had a lot of difficulty in getting those sorts of things approved.

Equally, in terms of rehabilitation programs, rehabilitation is obviously a timely process. Delays, we know historically, only serve to create more disability and more dysfunction and to wait for six or eight months in order to get approval to start a program creates more difficulty.

Ms Reardon: As a matter of fact, if you look at what the Workers' Compensation Board is doing right now, it has gone to an earlier intervention model because it recognizes that people were sitting too long and it was not getting to people soon enough. So its whole new strategy, its whole medical strategy, its whole vocational strategy has gone to an earlier intervention model.

Ms Oddie Munro: I think Dr Kaplan from the Ontario Psychological Association was asked by Mr Jackson to send a working definition, either relating to regulations or the bill itself, inclusive of psychological and stress, social and emotional and maybe it might be helpful if you could get in touch with them on that.

Mr Ferraro: Without prejudging the committee's possible recommendation vis-à-vis the rehabilitative payments, I just wish to point out to the delegation that, indeed, if you had to wait six or eight months to get the rehabilitative moneys flowing, it would be unacceptable to the government, too.

Our present thinking, quite frankly, is—as you know, it has been alluded to—the payments should start within 30 days. It is anticipated that any result of mediation would be around, at the maximum, the 60-day time limit. It is not as quick as you like but, at this juncture, I just wanted you to know which direction the government is going because anything longer than that would be even more prohibitive.

Mr Sola: I would like to touch on page 4 of your brief where you touch on the equity of the weekly benefits. I wonder, first of all, if you are aware that the \$450 maximum is tax free. Secondly, you say that 80 per cent of income with no ceiling is fair.

This morning we had a gentleman from New York who operated a no-fault system that we have partially modelled this on. His name was Richard Hsia and he stated that for modest premium increments, additional personal injury protection can readily be available. When I asked him what the modest increments were, he said they could practically double the payments for a small, nominal fee. I think he mentioned something like \$10 or so. I am not exactly sure because it was off the cuff.

If that is the case, if we could have something similar here, where if you are earning more than \$30,000, say \$60,000, and you wanted to double the \$450 per week, is it not fair that you pay an additional three per cent or four per cent or whatever it is of the total premium rather than have the vast majority of insureds in Ontario picking up part of the cost to pay for something that they will never be able to take advantage of?

Ms Trites: If, in point of fact, what you are trying to present is a good model up front, then it seems to me it should be as comprehensive and equitable as possible. Your argument is like saying that if 90 per cent of people are not going to avail themselves of \$500,000 worth of rehabilitation benefits, what is the point in them being there? I think that if you are attempting to be equitable and fair to all consumers and to put together a proposal that is a baseline, then saying, "The package is inadequate but we are going to add all of these things around the top of it to make it fair," seems to me unreasonable.

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Mr Sola: Yes, but the question here is cost. We are trying to keep the premiums, for the majority of the public, as low as possible. You can add all sorts of fringe benefits but the bottom line is that everybody in the province will have to pay so much more for every fringe benefit that is added.

What I am saying is we want to keep it as low as possible for the majority. For those who are making more than the ceiling we have here of \$30,000, and since it is not prohibitive, there is the extra cost. Do you not think it is a little bit more equitable to have it on that basis rather than have the people on minimum salary making sure that those in the six-digit figures do not have to pay an additional per cent or two?

Ms Trites: Frankly, our concern is much more about comprehensive and complete access to rehabilitation benefits. The fact that there is a \$450 ceiling that is not indexed is of concern because we know that if we have—maybe \$450 will be adequate now, but it will not necessarily be in the future. I can guarantee you that financial concern is a huge difficulty in rehabilitation. If a client cannot get the money to participate in a rehabilitation program, he is not going to be able to avail himself of that benefit.

The Chair: Thank you very much for your presentation. We have the Ontario Secondary School Teachers' Federation. I would ask those presenters if they would come forward. The brief is being circulated by the committee. If I could suggest a guideline of 15 minutes for the presentation, which would allow 15 minutes for some questions and answers, I know the committee would appreciate it. Mr Head, perhaps you would identify those individuals who are going to be with you. We are in your hands for the next half hour.

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

Mr Head: My name is Jim Head and I am president of the OSSTF. On my left is my vice-president, Doris St Amand, and on my right is William Reith, our staff researcher for this. It is not our intention to read the whole brief—it is not a lengthy one—but to just highlight certain sections and read into the record our recommendations.

Starting with the introduction, on behalf of its more than 40,000 members, the Ontario Secondary School Teachers' Federation welcomes this opportunity to present its views concerning the Ontario government's proposed Bill 68. OSSTF

is pleased to be able to add its collective voice to those of other groups that wish to offer constructive suggestions as to how this legislation can be improved to provide meaningful benefits to the citizens of Ontario, and not just teachers.

Overall the proposed legislation incorporates many positive features. However, certain parts of the proposed legislation, particularly those dealing with property damage claims and bodily injury compensation, in OSSTF's view contain a number of serious deficiencies that seriously weaken its effect and raise questions of fairness in application.

The federation would hope that the committee study and discussion of these deficiencies will ensure that appropriate remedial amendments are made before final reading and enactment of the bill. The legislative outcome needs to provide a framework within which the government, insuring companies and the general public can feel confident.

OSSTF, in this submission, would like to highlight briefly the specific areas of concern to its members in this proposed legislation and to offer accompanying recommendations for amendment to the bill that could serve as the basis for review by the committee in its deliberations.

Since the insurance company reserves the right to apply arbitrarily conceived "fault determination rules" to each compensation application, the proposed legislation provides for no right of subrogation for property damage. Thus, the proposed legislation violates the principle of no-fault.

Therefore, we would make the recommendation,

1. That the compensation for property damage resulting from an automobile accident be fully reimbursed to insured owners by the insurance companies of the owners of the vehicles involved, regardless of the party or parties at fault.

Bodily injury compensation: OSSTF has serious objections to several items proposed in this part of the bill. These include the level of weekly benefit proposed, the elimination of the collateral source rule and the exclusion of psychological related injuries from section 231a.

OSSTF believes all accident victims should receive full compensation for lost income from automobile insurance companies, which are offering automobile insurance for the specific purpose of compensating victims for the results of automobile accidents.

No provision is made for the indexation of this weekly benefit of \$450, as is the case with other

income benefits available through provincial or federal legislation, raising the question why the Ontario government cannot bring some uniformity to the way it legislates benefits for its citizens.

We would make the following recommendations:

2. That the weekly benefit of \$450 be deleted and that the weekly benefit be the injured person's gross weekly pre-accident income from his or her occupation or employment, to a minimum of \$185, less any payments for loss of income except unemployment insurance benefits, benefits received by the insured person from the Canada pension plan, workers' compensation or the insured person's work-related pension plan;

3. That the weekly benefit paid to an insured person be adjusted annually 1 January to correspond to the percentage rise in the Ontario consumer price index as published by Statistics Canada.

Section 231b of the proposed legislation does away with the collateral source rule. The impact of this section of the legislation will clearly be felt by teachers who are entitled to sick leave and long-term disability insurance benefits cited in clauses (c) and (d).

Whereas under the current system teachers and other employees who have negotiated or possess legislated rights to sick leave accumulation can sue to recover such lost income, no such route is found in this bill. In addition, subrogation by long-term disability insurance or health insurance providers is not retained in the legislation. To the contrary, this is expressly prohibited in subsection 231b(3).

Since the right of teachers to sick leave is a statutory one, and since the right to sick leave accumulation is a negotiated one, and the sick leave gratuity that flows to teachers as provided for by statute is also an added negotiated right, OSSTF strongly opposes any limitation in this area that could prove detrimental to its members injured in automobile accidents.

The likelihood of a member with rights to sick leave and sick leave accumulation being injured in an automobile accident and thereby exhausting all sick leave is very real. A member so affected could stand to lose all prospects for a sick leave gratuity if the accident occurred late in the individual's employment career. If it took place early in an individual's career and resulted in recurring bouts of disability resulting from the initial injury, the prospects could well be similar.

To compound matters even further, should an employee be forced to use sick leave late in his or her employment career and not be covered by disability insurance, the inadequacy of the weekly benefit could result in a reduction of the employee's pension.

A myriad of other possibilities could arise which under this legislation could seriously penalize employees at any stage of their employment, possibilities which cannot even be imagined now and which the authors of this bill certainly have not had the foresight to contemplate.

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We therefore make the following recommendations:

4. That clause (d) of section 231b be deleted and the no-fault benefits schedule be amended accordingly.

5. That the insurer of an automobile insurance victim be obliged to pay the weekly benefit outlined in recommendation 2 directly to the employer of the insured if the insured receives sick leave payments for the period of time the insured is eligible to receive such payments.

Since the federation believes that the automobile insurer should pay benefits to an accident victim, the OSSTF contends that income continuance insurance providers, including workers' compensation as well as medical and dental health insurance providers, should retain full subrogation rights. We therefore recommend,

6. That subsection 231b(3) be amended by deleting the words "(d)" and "not" and inserting the word "or" before the word "(c)."

Section 231a of the bill provides that "in an action in Ontario for loss or damage from bodily injury" arising out of an automobile accident is limited to three situations set out therein: death of the injured person, "permanent serious disfigurement" of the injured person or the injured person's "permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature."

Nowhere is it recognized that an accident victim could be so severely psychologically impaired as to render the individual permanently totally disabled. Since this unfortunate eventuality can and does occur, OSSTF would support an amendment to recognize this distinct possibility.

7. That subsection 231a(1) of the bill be amended by including a clause (c) to read "permanent serious impairment of a psychological or psychiatric nature."

In conclusion, OSSTF defines a fair and equitable compensation system as one in which the person injured is financially no worse off than the person would be if the injury had not occurred. Definite reformation of Ontario's automobile insurance legislation is badly needed, but to be fair and just any no-fault scheme proposed for consideration and adoption should adhere to certain well-grounded principles:

(a) Full compensation for all personal injuries including psychological pain and suffering and all property damage.

(b) Full monetary compensation for all actual and potential lost earnings, provided for in an efficient manner, fully indexed to inflation and to cover all costs for continued contributions to benefit and pension plans.

(c) Full monetary compensation for additional health-related costs as outlined in section 7 of part II of the no-fault benefits schedule.

While anxious for such a result, the federation cannot support the introduction of legislation that contains provisions that would erode the statutory and negotiated guarantees its members and other Ontario employees enjoy. If it is going to mean anything in terms of insurance, automobile insurance ought actually to insure against the damages arising from automobile accidents in all respects and not purport to be something it is not.

We will be pleased to answer if you have questions.

Mr Kormos: Your that brief is in my view well reasoned, well thought out, and quite frankly hits the nail on the head. The government and the insurance industry are telling us that it is an either-or: either you have grossly inadequate no-fault benefits as we currently have because they were not indexed and have not been updated for over 10 years, or as you are speaking of, you have a system that truly compensates injured people; that is to say, any innocent injured victim should be restored to the position that he was in originally.

I understand that money is an inadequate way of doing it, but it is as close as we can come in our society. Surely we do not want to revert to an era of retribution. We talked about this the other day. We do not want to revert to a biblical *lex talionis*, an eye for an eye, a tooth for a tooth.

I am wondering, in view of what you have prepared and the obvious care that you put into it—I trust you have noted in at least today's papers, all three of them, some \$30,000 to \$50,000 worth of newspaper advertising, paid for by the Insurance Bureau of Canada with

drivers' premiums, and no two ways about it; that is where the money comes from.

Here is an industry that is crying poverty. At the same time, in a press release in December 1989, it announced a loss for 1987 of \$142 million yet the Ontario Automobile Insurance Board said that in 1987 the auto insurance industry in Ontario made money. This is newspeak. I guess we have to learn how to talk their language. When they say, "We lost money," it means they made money. I am not looking forward to the day when they say they made money because that must mean they lost money.

I should tell you that they said they lost \$142 million in 1987. The Ontario auto insurance board says that means they made around \$50 million or \$55 million. This year they are only saying that they lost \$100 million in 1989, so I presume that 1989 was a much healthier year than 1987. It probably indicates profits of anywhere from \$75 million to \$80 million, if a \$142-million loss means a \$55-million profit.

You use the term "no-fault." I trust that what you people perceive as a fair system is one that provides no-faults regardless, which provides some basic compensation: lost income, rehabilitation, care, regardless of fault but at the same time preserves that very important right for an innocent injured victim—a little kid at the wheel of a drunk driver or a reckless or negligent driver—to be compensated for pain and suffering. As I understand it, what you are talking about is a system that is compassionate regardless of fault, but at the same time recognizes the right of an innocent injured victim to be made whole again.

Mr Head: Yes, that is correct. I will ask my vice-president. We do have a section on why we think it is actually contrary to what is being said.

Ms St Amand: I certainly agree with the comment you made about the profits insurance companies make. I see this legislation as doing nothing more than reducing the liability that is properly that of insurance companies, and this year they are going to make more money because you are going to reduce their liability and this legislation will give them an additional eight per cent.

Mr Kormos: Minimum.

Ms St Amand: Minimum.

Mr J. B. Nixon: Thank you for your brief. I think it is well prepared and well presented and I appreciate your coming. I have a somewhat philosophical question that I would like to put to you. It is not my idea; it is an old idea that

Professor Dunlop, University of Toronto law school, has written about. He talked about the adequacy of monetary compensation for pain and suffering.

He says, as you have said, that generally the money someone receives in a court action to compensate him for pain and suffering is not true solace at all, that the real solace for pain and suffering is an assurance that you will have the necessary medical rehabilitation and long-term care needs satisfied regardless of whether you are right or wrong in court, regardless of whether you have won the lawsuit. I would like you to address that principle because it is a very different attitude to treatment.

Some suggest to fully compensate people monetarily for their pain and suffering only if they are right in an action and have a good lawyer. Others say that the way to compensate people, all victims, for their pain and suffering is to give them the medical, rehabilitation and long-term care benefits they need.

Where do you fall down, on which side?

Mr Head: We want the best of both worlds.

Mr J. B. Nixon: We all do.

Mr Head: I think it is fair to say that if you are talking about people involved in compensation, especially—a lot of our brief talks about what could happen to a person in his last five years, which as you know under the pension legislation is often his best five. What does that do for the surviving spouse? What does that do for the individual going on pension? Although they may have all the best care in the world, that is not going to compensate for the future. I would love to be able to say it was either-or but I do not think it is. I think it is both.

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Mr J. B. Nixon: The problem is that under the present system, so long as recovery is based upon your proving a tort in the courtroom, only 50 per cent of the people get that compensation. That is one of the real problems we were trying to address.

Mr Head: We recognize the government is trying to address a wrong. We think it could do a little better.

Mr J. B. Nixon: I hear you.

Mr Jackson: I will be brief. I am quite concerned about the implications of reduced benefits and their impact on reduced pensions. Can you give some clearer illustrations of that concern? I do not think the committee appreciates how an adjustment of this benefit is going to have an impact on pensions at the point of

retirement. I think we should have that more clearly laid out on the record.

Mr Head: I will start and let my colleagues jump in.

Mr Jackson: You can use the whole four minutes to do that.

Mr Head: The \$450, even as a tax-free benefit, would certainly not be what a salary level would be for someone in his last five years of teaching and, unfortunately, the pension act says you can only receive the benefit of the salary; it is based on salary, not on service or time. So the best five would be prior to any of the \$450, which is very definitely a reduction of a person's pension, and we do have survivor benefits, so it is also a reduction of the spousal benefits.

From that perspective, it is grossly inadequate. Although it might seem generous, it certainly would not cover the majority, if not all the people in teaching, from teacher right through to director or deputy minister, who would suffer even more.

Mr Jackson: They usually find a way of getting around that. I do not think the deputy ministers are suffering that much.

Mr Head: They do make more than we do.

Mr Jackson: I guess the only other area of concern I have is that when I asked the Minister of Education (Mr Conway) a question in the House about the relationship between this piece of legislation and its impact on the teaching profession—and we have had this corroborated—he seemed unsure as to how in fact it would adversely affect the profession.

Have you had an opportunity to have any discussion with the minister or the ministry staff on this point? It is going to cause some change in negotiations with school boards perhaps, to adjust their benefits package to fill in the void that has been created or to amend collective agreements so that they better correspond to this piece of legislation? That begs the further question of what you have to give up when you are forced by some form of legislation to deal with an amendment to your collective agreement when the trustees did not put it on the table in the first place.

Mr Head: I am going to ask Doris St Amand, who is vice-president of protective services, to answer more fully, but I would like to answer the first part about having any contact with the minister.

I would have to go back and check my correspondence, but I know I did correspond

with Mr Elston. I think a copy also went to the minister, but I would want to reconfirm that. That is the only extent I personally have had. I have not had an answer.

Ms St Amand: Yes, and I had opportunities to visit with Murray Elston's executive assistant. For half an hour I went through the problem of use of the sick leave plans of teachers and other workers in this province in the fashion contemplated by this legislation and pointed out the real difficulty of using sick leaves that way in relationship to sick leave credit gratuities.

It was his view that that whole aspect, that impact of this use of sick leave plans, was not contemplated when the legislation was formulated. He assured me that he would check that with the various legal advisers who had been part of the drafting of the legislation and would get back to me. I wrote him a letter two days later which summarized the difficulties in the legislation and what his commitment was and I have yet to receive a response from him.

The Chair: Thank you very much for your presentation.

Mr Jackson: Just a question, Mr Chair. Would the government's representative care to take up the notion—

The Chair: In the absence of the parliamentary assistant, we will—

Mr Jackson: You know my point. The point is that we are hearing that meetings have occurred with the government with respect to understandings of this legislation and the deputation have not heard back. It is not just a point of courtesy; it is a point of making sure that consultation is occurring within the ministry.

The Chair: You can take that up with the parliamentary assistant.

Mr Jackson: Hopefully, you will get some response to your letters plural. I am pleased that you have indicated that you have made the contact with the ministries involved. Thank you.

Mr Head: If I may, there is an error on page 6 of our brief. It is recommendation 1, which was an earlier draft. The correct recommendation is the one I read into the record, which is found on page 2.

The Chair: Maybe you could read the corrected recommendation for me, if you would.

Mr Head: Yes. The correct one should read: "That the compensation for property damage resulting from an automobile accident be fully reimbursed to insured owners by the insurance companies of the owners of the vehicles in-

involved, regardless of the party or parties at fault."

The Chair: Okay. Thank you very much.

Mr Joyce, the clerk is distributing the presentation. Please have a seat. We have slotted 15 minutes for the presentation and if you could go through the presentation in between five and seven minutes, that would allow us some time for questions, comments and discussion. We are yours for the next 15 minutes.

Mr Joyce: Okay. I can see that what I have to say is going to be well received.

The Chair: Do not let that fool you. Members come and go during every deputation. I can assure you that they will read the submission, as well as Hansard. Please feel free to start.

RICHARD JOYCE

Mr Joyce: First of all, my name is Richard Joyce. I am here because I have a concern. I feel that some of the protection or that the protection afforded by the plan does not appear to be adequate to deal with some of the losses that small business people are likely to suffer when they are involved in automobile accidents.

I am aware that other people have addressed this issue, and rather than just saying the same things to you again—in fact, I found out today, by reading the paper, that one of my colleagues, one of the fellows who does the same kind of work that I do, was here yesterday. Rather than go through probably very much of what he said for a second time, I thought what I would do is really get right to the issue and hopefully maybe have a little bit of a discussion on it.

I think it is fair to say that you all by now know that if a small business person is involved in an automobile accident, he is likely to suffer not only a loss of income, but he can suffer profit losses, his business can lose profits, lose money and, as a result of that and for other reasons, he can actually lose his business. If a business loan is guaranteed by his family home and other assets, he can actually lose that as well. So there are pretty significant losses that can be faced by an individual.

I am what is referred to as a litigation accountant. The reason I think I can speak a little bit about this is that I have been involved for the last 11 years in making calculations and dealing and investigating such losses. I have reviewed the material that has been put out on the plan, and while I should say that it has not been an exhaustive review, I do not believe that there is really adequate protection afforded by the plan to

deal with these kinds of losses. I might say that these losses are substantial.

In the material that I provided you, I have given you three examples. I should say that they are reasonably fair examples because obviously I am not going to deal specifically with cases that I have been dealing with, but they are very clearly very close to actual cases involved. I think it is fair to say that the plan does not provide coverage to protect these losses.

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The material I wrote, and I wrote it some time ago, makes the statement that in fact not only does the plan not provide coverage, but such coverage is not likely to be available elsewhere. I have to say that after I wrote that, I was talking to some other people and I found that is not entirely accurate. In fact there are other coverages available, but they are very expensive.

As an example, I worked out a situation where a small business person would protect his income for about \$2,500 a month, would protect business expenses in the neighbourhood of about \$5,000 and possibly protect his business value in the neighbourhood of about \$200,000. Depending on how old he is and all of the various things that go into disability coverage, he is likely to pay \$3,000, \$4,000, \$5,000, \$6,000 a year for such coverage, and obviously the coverage has limitations. That obviously is quite considerably more than he might pay when the insurance provided would be spread over a large number of people and the risk reduced.

Because I know that small business people cannot afford \$2,000, \$3,000, \$4,000, \$5,000, \$6,000 a year to pay for this coverage and that, as a practical matter, probably would not have it anyway, the question I have of the committee is how this is going to be dealt with because we are going to expose a very large number of people to what is a very catastrophic loss.

I deal with these people regularly. I know what happens and I know there are going to be people regularly who are going to be faced with substantial business losses, the loss of any assets they have, and they are not going to be protected. I just wonder from the committee how that is going to be addressed. Are they going to be allowed to get by however they can? That is my question to you people.

Mrs LeBourdais: You are quite correct that this was brought up yesterday by a number of individuals. I think specifically of Linda Matthews of the Ontario Chamber of Commerce, and in fact I also made the same point. You are correct that individuals, small business people in partic-

ular, would have to purchase additional insurance. Certainly prior to my being elected, I was in that particular situation but I, like a lot of others, had to have that disability insurance, not so much in case of a car accident but in case of any other kind of accident.

Mr Joyce: Absolutely.

Mrs LeBourdais: I realize you have to keep all kinds of costs down. When I am talking small business, I am not using government's terms of small business. I mean very small business with either one, two or three people or one key figure picking up help as it is required for specific projects. You will have to buy that insurance, but one would think that to some degree it would almost have to be a part of your business expense, because any other catastrophe that had nothing to do with cars could befall you and put you into this very same circumstance. I realize every cost has to be cut where possible when you are first starting out, but I am saying that in this instance that disability insurance would have to be a part of the total cost of staying in business.

Mr Joyce: Okay, but that is one disability insurance. I am 44 years of age and I am paying \$72 a year per \$100 of coverage; \$72 a year for each \$100 of coverage that I obtain and that protects my income. That does not protect my overhead expenses, nor does it protect any value that my business might have, which by and large is the nest-egg that small business people use to retire because they do not have pension plans and all this other sort of thing—as I said, \$3,000, \$4,000 or \$5,000.

I appreciate what you are saying, Linda. I deal with small businessmen on a regular basis. They do not buy it. The reason they do not buy it is because particularly when the business is new, they are making \$5,000 or \$6,000 a year. Are you suggesting that individual should take \$3,000, \$4,000, \$5,000 of that so that he has his income protected? I do not think so. I do not believe that is the kind of suggestion. None the less, that is the kind of person who is going to be affected by this plan. I do not believe that is fair and I do not believe that is equitable. Quite frankly, I do not even believe that was the intent of the legislation.

Mrs LeBourdais: I cannot comment on the intent of the legislation specifically, etc—perhaps Ms Parrish might want to address that—but I would suggest to you that in coming up with the figures and the parameters that we have, we have tried to include the bulk of the population, those who will be best affected by it, and I think that fact keeps getting lost in here.

It will not help those in higher income brackets as much, there is no question, but depending on what year you go back to for statistics, we feel we have hit in the neighbourhood of somewhere between 75 and 80 per cent of the population in getting to that \$30,000 figure. For people who are above that, there is no question they would be well advised to find the dollars to get extra protection.

Mr Kormos: We have used the illustration many times about the small entrepreneur. I think one of the problems—because you should know the Ontario Chamber of Commerce was here yesterday.

Mr Joyce: Yes, I read what they had to say.

Mr Kormos: They supported the government proposition. My concern is that I think maybe, just maybe, when the Ontario Chamber of Commerce is talking about small business, it is sort of talking about small business, as compared to what we talk about when we mean small business down in Welland-Thorold: entrepreneurs, hard-working people for whom there is no such thing as a 40-hour work week.

You are talking 60- or 80-hour workweeks and oftentimes you are talking about a business that starts from the basement or the garage behind your house and grows because you have invested the revenue back into the business, rather than taking it out in a way that can be demonstrated as income that your no-fault adjuster is going to come on to you for. We have used the example of how an innocent victim of a drunk driver can be forced into bankruptcy, the works.

Mr Joyce: Yes, I heard you last night.

Mr Kormos: Why do you think the Canadian Federation of Independent Business had a perspective that was somewhat similar to yours, had some great concerns about the future or the wellbeing of small entrepreneurs? You come here expressing those concerns. Where do you think the problem lies? The Ontario Chamber of Commerce appears to be entirely supportive of Bill 68, this new insurance proposal. You and the CFIB come with some concerns about how it is going to impact.

Mr Joyce: Let me just talk about the chamber's comments, because I have read those comments. They are talking about affordability and they are saying, "We think it is good to have balance, and affordability has got to be in that equation." That is a fair comment. I do not know how a premium of \$2,000, \$3,000 or \$4,000, over and above a \$1,000 car insurance premium, fits into the equation of affordability.

Linda, I appreciate what you are saying, and that is fine in a situation where somebody is earning a reasonable income, but when you are talking about somebody paying \$4,000 or \$5,000—

Mrs LeBourdais: How do you define "reasonable," in your words, though?

Mr Joyce: Okay, earning a very good income. If you are making \$50,000, \$60,000, \$70,000, \$80,000, \$100,000, \$200,000 a year, then you have a choice of a vacation or protecting yourself, and if you do not protect yourself, okay, you take your chances. But I am not talking about people like that. I deal with small business people who do not make huge sums of money and whose livelihood and everything is in that business. Not only are you talking about just their loss of income, you are talking about their nest-egg, probably in a lot of cases their ability even to earn income.

What you are saying is: "All we'll do is replace the income. In addition to that, you're going to have to go and pay expensive"—and it really is expensive, I think you have to admit that—"disability coverage." As I said, that is fine for people with a good income. It is not fine for the people along Bloor Street and down Yonge Street and on every street in the whole of the province. It just is not going to work.

We can have a debate. You are making some good points and maybe I am making some good points too, but the fact is that those people are not going to be protected, and you know it as well as I do, because it just does not happen that way. They are going to end up in an accident, they are going to lose their business, they are going to lose all kinds of money and you are going to say, "Well, yeah, we thought about it, and you should have bought disability insurance." Come on. I do not think that is really a great argument. It is fine for a businessman like me, but not for them.

Mr Sterling: I was not here for the chamber's presentation yesterday, but it was ironic that I noticed Linda Matthews's picture in the *Globe and Mail* this morning in the business section, congratulating her on being the president of the chamber. If you read down as to where she came from or where her real place of employment is, it is within the insurance industry.

Mr Kormos: I'll be darned.

Mr Sterling: I presume, though, that she is representing the interests of the chamber in the whole matter, but I think it does lead to some question as to her credibility on the issue. I am glad you brought forward this problem in relation

to small business. I just do not think that sometimes the large associations really represent—I found this in government, often you would get the chambers coming forward or whatever—they do not really represent a lot of men on the street.

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I really think that this is a major, major gap in the legislation, and I am sure that there are other kinds of needs which were formerly covered by our tort system, which were not foreseen or we are not recognizing because we do not have somebody like you coming forward. I am sure there are other kinds of losses which have been recognized by our tort system, which are there.

I practised law for almost a dozen years before I got here and I know what small businessmen have to go through when they start. They do not have the luxury of going out and buying rich policies which can cover them if they are off and they have no one to rely on but themselves.

Mr Joyce: I was talking to a small businessman last evening and he has been involved in an automobile accident. The last time he bought a car was in 1978 and the car is falling apart, but he has to build his business and he has to put his money back into the business. He has not got \$4,000 or \$5,000 to pay for these kinds of coverages—there is no way—and he is not unusual.

I really think, Linda—and I am here representing myself personally. You unfortunately had to take the opposing view, so I guess you bear the brunt of it.

Mrs LeBourdais: Fair enough.

Mr Joyce: But I really think that it is something that should be seriously addressed. I really do. While I am not altogether confident that it will be, I certainly wanted to have at least a chance to speak to each of you and point out that this, in my view, is a very serious problem and that it should be addressed. I think otherwise the system for a vast—

Mr Sterling: Could I just—

The Chair: Very quickly.

Mr Sterling: I think the other thing a businessman, who you are representing today in terms of what you are saying, would find very repugnant in this is that I do not think that a businessman who risks as much as you are talking about, and a lot of small businessmen do, would agree with the general philosophical thrust of this, that the person at fault should be dealt with as kindly as a person who is not at fault.

Mr Joyce: Yes.

Mr Sterling: That is just not the basis of how the business community deals with matters. If they are not smart and they do not work as hard as the next guy, they do not expect the same kind of results.

Mr Joyce: That is right.

The Chair: Thank you very much for your presentation.

Mr Joyce: There is one thing. In the presentation material that I put down, I indicated that coverages were not provided. I am not sure through this whether I mentioned this before, but in fact, as you can tell from what I said, I checked that out and I did find in fact that coverages were. So I would appreciate it very much if you would make the note that between the times I wrote this and coming here, I did check to see the kind of coverages. I think it is interesting to note that, as an accountant for over 20 years, I had never heard of those other coverages, except in cases of professionals. So that can tell you how wide a spread of people bought it.

The Chair: Thank you.

Dr Burke, would you come forward at this time? The clerk has circulated your brief. For the next 15 minutes the committee is yours. If you could divide it into seven or eight minutes in presentation and allow us seven or eight minutes for some questions, I would appreciate it. Please proceed.

DR HARLEY L. BURKE

Dr Burke: First of all, thank you very much for the opportunity to speak before this committee. My background is as follows: I am a PhD in clinical psychology. I have been in private practice for the past 11 years. During that time, almost exclusively, I have devoted my research and practice to the treatment and assessment of victims of motor vehicle accidents and their families. As well, my expert testimony has been called upon by the courts on numerous occasions. I have written a number of articles for professional journals, medical and legal alike.

My reason for being here: In light of my background, as I have just explained, I am here to point out a fundamental, as I see it, omission in the present legislation with respect to the no-fault scheme, which is that there is a very clear and shocking omission with respect to psychological compensation. As I see it, there is absolutely no recognition of this concept under this new plan. In particular, the present notion of the threshold speaks exclusively to bodily injury, permanent and serious. Again, no recognition of psychological injury is mentioned.

Not only is this a basic violation of individual rights but, both from a layman and scientific viewpoint, I think I could use the word "absurd." This omission suggests very clearly to me that somehow there is a disregard or lack of respect for the human psyche. The omission suggests an unimportance of the human psyche. It suggests that there is little consequence of the human psyche in individual functioning. To me, this is an unenlightened view and sets the practices of psychiatry and psychology back several hundred years.

I noted in my brief here that this is the type of thinking that was prevalent in the Middle Ages when the psyche was not recognized. Psychological concepts were not recognized and mental suffering and distress were treated and regarded by shamans and priests as magical and as being caused by demonic spirits.

All of us know what pain feels like. All of us know what embarrassment feels like, helplessness, insecurity and unhappiness. These are all fundamental human experiences. They are all components of psychological functioning. We have all had these experiences so we can all relate to them. We can also relate to physical illness.

We have all had some sort of physical malfunctioning of one degree or another in our lives, so we can relate to that and that is accounted for in the current legislation. But how is it that as human beings we can relate to psychological consequences and psychological experiences and yet that concept is totally ignored under the new plan? So, as I note in my brief again, I respectfully suggest and ask that compensation for psychological distress be considered under this new plan.

I have estimated that I have evaluated over 2,000 motor vehicle accident victims and my work has made it abundantly clear to me that physical trauma is always accompanied by some sort of psychological reaction—always. This does not necessarily mean that if someone is somewhat upset or distressed as a result of a car accident, they should be compensated. That is not the automatic meaning. If someone is somewhat in shock or someone is in somewhat of a state of upset for a couple of days, so be it. Similarly, if someone has a bruise or is somewhat hurt as a result of an accident, then compensation is not necessarily in order.

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However, if someone is seriously hurt physically, compensation is considered. I am suggesting that if psychologically a person is hurt seriously, the potential for compensation ought

to be considered, and it is essentially this potential that ought to be considered as part of a compensable package in the new legislation.

I want to point out that each individual has a varying degree of vulnerability to trauma or stress. Some recover quickly; some do not. The point here is that if one is vulnerable to trauma, one's psychological difficulties can be every bit as immobilizing and chronic as any physical injury can be. What I have found and what the research has demonstrated is that there is very little correlation between the severity of an accident and the psychological consequences of that accident. In other words, someone can have a very minor accident and it results in a very serious psychological after-effect. That is because of the particular vulnerability of that individual, and that individual has to be recognized for his vulnerability.

In my practice I have noticed and noted that syndromes such as depression, anxiety and phobias are very common consequences of physical trauma. If you add to those syndromes—and syndromes are just a compilation of symptoms—if you look at a whole package of symptoms and add these that I was talking about, such as unhappiness, insomnia, nightmares, irritability, moodiness, when all of these particular symptoms become manifest, a person's life becomes devastated, and it results in very serious disruption of the individual's life.

So it is to be taken very seriously when a person suffers psychologically. These are not made-up concepts; as I tried to relate earlier, these are common human experiences. Everyone has a psychological makeup, and some people are more vulnerable than others, the point being that those who are vulnerable should be compensated if in fact they suffer psychological malfunctioning.

If one considers that ongoing pain and physical restriction lead to a loss of enjoyment in one's life, then one is automatically saying that there is a psychological component. That has been recognized for many years, and suddenly that recognition is taken away. It does not exist according to the new legislation. If the quality and standard of one's life is reduced by virtue of pain, then certainly how one thinks, how one feels, how one acts in one's life is going to be affected, and that is the psychological consequence of a traumatic episode. So again, compensation must be considered for the potential of psychological suffering.

I also want to point out that clinical experience and research have shown that physical and

psychological trauma in the case of a motor vehicle accident always requires an emotional adjustment on the part of the victim and that there is a concurrent adjustment difficulty for the family of that victim. When a victim becomes depressed or out of work, there is tremendous emotional strain on his marriage and on his relationship with his children, and the family members then have to be recognized as victims too as a result of the individual's psychological problems. When family members are deprived of companionship and love, they often can develop psychological problems too. It is a domino effect often. But under the present legislation, the suffering and loss and accompanying emotional distress are not regarded as compensable with respect to family members.

My last point is that I would hope that the government re-evaluates the significance of the psychological component of the family and individual as it relates to motor vehicle accident compensation and allows for the valid assumption that mental suffering is every bit as debilitating and painful as any physical injury can be.

Mr Kormos: I am talking now about this threshold and really that is what this insurance scheme is all about, a threshold, because we have had no-faults in this province for over a decade now. The impression I am getting from what you are saying is that the threshold is a purely physical criterion—

Dr Burke: Correct.

Mr Kormos: —and that it omits any consideration of psychological, emotional or psychiatric damages. It is difficult for people like myself, who are laypeople, to articulate those things properly; you can.

The other impression I am getting is that some people who do not meet the threshold physically may well suffer and be as disabled, for a variety of reasons, as the person who does physically meet the threshold. So that this purely physical, and it is a nonsubjective criterion, this purely physical and arbitrary dividing line is what really is problematic.

Dr Burke: I think that is an excellent point. Not only is the thrust of my argument that there is not recognition of psychological suffering, but the fact that people can indeed have very minor physical injuries or have physical injuries which they recover from, but they are not quite the same. They may have restrictions on their ability to function in the workforce or to deal with their family life, and these restrictions are going to result in psychological problems too.

Ms Oddie Munro: It is my understanding that the regulations ensure that the psychological trauma or injury is covered under the accident benefits and that indeed a manifestation of psychological trauma through physiology or whatever other measures you wish to take will also give one the right to sue. In addition—and you may not have had a chance to look at the regulation, which is why I am bringing it to your attention—in regard to the rehabilitation team itself, I think it has been accepted that psychologists are called by people to treat and I presume that there is a relationship between psychologists treating psychological trauma and the evidence of that trauma. Is there something beyond that?

In addition, I think a dependant or family member can also access the benefits under the no-fault portions, so in both situations I feel that there has been movement and maybe some confusion as to whether or not we are recognizing what is a known fact of mental illness.

Dr Burke: If I understand correctly, then my response would be that perhaps when we talked about a neuropsychological problem, when there is some kind of brain damage that results in psychological malfunctioning, then we are talking about something that may be a little bit more measurable through particular testing, whether they be physical tests or psychological tests.

Often in the case of a straight psychological difficulty, where there is not any sort of physical basis for it, regardless of how subtle it may be, we are talking about a very subjective measure that my kind of training would allow me to focus on and to ascertain. But there is not any necessary test that would demonstrate that there is this malfunctioning. It would be my word, for example, as a psychologist or the word of a psychiatrist, strictly on a subjective type of basis, that there is some sort of psychological problem. That is not, as I say, demonstrable in any physical way but based on just a verbal interaction that occurs.

Ms Oddie Munro: But under no-fault, I think that the bill's intention is to include that kind of manifestation. I guess maybe the parliamentary assistant or the ministry representative can clarify that.

Ms Parrish: Perhaps it would be helpful to say that in the no-fault benefits schedule, it clearly says that "The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident." Then it goes on to say what you get, weekly benefits, rehabilitation and so on. So it is very clear that under the no-fault benefits,

anyone who sustains physical, psychological or mental injuries can receive the various benefits. They must, however, demonstrate that it is as a result of the accident.

Dr Burke: Is there a threshold concept related to the psychological damages?

Ms Parrish: Regarding the issue that you are raising, although I am not quite sure, I think Ms Oddie Munro is trying to indicate that there is a difference between the no-fault schedule, which certainly includes all of these things, and your point referring to the threshold for the right to sue, for which there is a slightly different test. But I am just clarifying that in the no-fault schedule these things are fully compensable, including family members, who may have also suffered these traumas as a result of the accident, even though they themselves were not in the accident.

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The Vice-Chair: Dr Burke, thank you very much for your presentation. We appreciate it.

Our next presenter is J. R. Barr of Harris, Barr, barristers, solicitors and notaries.

Mr Barr: Madam Chairman, may I say, first, that I am wrongly labelled on the agenda. I am a retired Supreme Court judge. I am not an employee or an associate in the firm of Harris, Barr, and it is an error that is shown there. But I would be grateful if the committee would consider giving me an indulgence.

The Vice-Chair: Could I ask you to please sit down so that the microphones can pick you up?

Mr Barr: It will not take that long. You are going to either throw me out or you are going to allow me to leave one way or the other.

I retired from the bench because of a heart attack, and I had a further very severe heart attack four months ago. If you could put your committee hearings off for six months, I would be a happier man. I am feeling very tired. You have another speaker to go after me. If you would accommodate me tomorrow, or in Ottawa, Sudbury, Windsor or any other place, I would appreciate an opportunity, because I think I have a perspective to give you that I have not seen reported in the papers and certainly nobody has given today.

The Vice-Chair: Could I have the consent of the committee? Okay. Would you please sit down and just give us—

Mr Ferraro: He wants to do it another time.

The Vice-Chair: Another time? I am sorry. So you will arrange to have it rescheduled?

Mr Barr: May I confer with Mr Carrozza tomorrow morning perhaps?

The Vice-Chair: Certainly. Please do.

Mr Barr: Or if Mr Carrozza could say, I can pitch in tomorrow. I would be glad to come back. I live in St Catharines.

The Vice-Chair: We will not be meeting tomorrow. We do not meet again until Monday morning, and that will be in Sudbury. We do not meet again here in Toronto until Tuesday, but if there is a time slot open, if you would like to discuss it with the clerk, we will do our best to accommodate you.

Mr Barr: You are very kind. Thank you very much.

The Vice-Chair: Thank you. Not at all.

If Mr Shour is here, would he please come forward?

Mr Ferraro: We should thank his honour for agreeing to postpone it, because of the lateness of the day.

The Vice-Chair: Thank you. Mr Shour, as you are aware, you do have 15 minutes, and I would suggest that you try to balance your presentation to allow time for questions.

ROBERT SHOUR

Mr Shour: I will try to do that. Thank you for allowing me to appear before this committee and make my submission.

My name is Robert Shour. I live in Toronto, and I am making this representation to this committee because I am concerned that Bill 68 makes our roads less safe for drivers and pedestrians and, in doing so, deprives innocent victims of car accidents with less financial protection.

I have been practising general civil litigation as a lawyer for almost 12 years. My concerns are safety and compensation. I have a young family, and I am concerned for their safety. I should say as well that I also feel obliged to speak on behalf of those of my clients I represent who are affected by this legislation and for the people I am going to be meeting in coming years, who I am going to have to deal with and explain the consequences of their motor vehicle accident or injury in light of this proposed legislation.

I support full compensation for innocent car accident victims because it gives the individual victim a sense of justice, and I emphasize that. The recent events in eastern Europe should emphasize in a very practical way to this committee the importance of that abstract concept. It is a long-standing right in our society that

the victim of a wrong has access to justice in a court of law. Also, it helps to measure the physical, social and emotional damage caused by car accidents. The huge insurance costs of car accidents should prod us into dealing with the causes of car accidents. It is a reflection of a failure in our society.

Look at the deaths caused by car accidents. Look at the maiming caused by car accidents. Look at the family disruption and family destruction caused by car accidents. Look at the financial losses and the cost of repairs caused by car accidents. What is the solution to this devastation on our roads? Surely the solution is not to give innocent victims less. Instead, in my submission, a lot more can and should be done to reduce motor vehicle accidents.

By detaching financial responsibility, even by proxy through insurers, from the wrongdoer, Bill 68 reduces the wrongness of the act of bad driving. Making it cheaper to injure and maim people symbolically gives a message that in Ontario responsibility for your conduct is not so significant. It is the wrong message, in my submission. Laws should encourage civic responsibility and, in particular, driver responsibility.

The insurers say that the hundreds of millions of dollars in subsidies that they get through this legislation from unions, the Workers' Compensation Board, from no longer paying OHIP or premium taxes, from paying victims less, end up in our pockets as savings from premiums. But Ontario society pays all of that back; we all pay it back collectively as taxpayers, workers and victims.

Under this bill, in my view, bad driving as an antisocial activity will cost insurers hundreds of millions of dollars less. I think that is a fundamental defect in the legislation. How can roads be safe for us as drivers and pedestrians, with such a huge subsidy to bad driving? I do not think the insurers are getting the subsidy.

I know there have been points made about a huge windfall. I think what they are getting is certainty, something more valuable. Actuaries can tell the insurer statistically how often an insurer can expect to pay out accident benefits. That makes it easier to estimate the profits on the approximately 95 per cent of cases that will not pass this threshold.

As an example, take \$100 million. An 18 per cent return on \$95 million yields a certain return; the profits and losses on your other \$5 million are not so significant. If in that example you substitute for "millions of dollars" "percentage of car accident cases" you have, in my view, the

real value of Bill 68 to insurers. Insurance skills are less critical when only five per cent of the cases are actuarially unpredictable. The problem is that to achieve that stabilization of the insurer's profits, innocent victims are made to pay.

The proposed system substitutes a money problem, the cost of premiums, with a whole array of structural problems, many of which have been previously discussed before this committee. For example, your own insurer determines fault. When the other fellow's insurer pays, fault is an important issue, but when your own insurer pays it is easier and faster, administratively, for your insurer to say arbitrarily that liability is 50-50.

In section 230a, the right to sue, in my view, is of little economic value. A lawyer will be loath to recommend a \$400 lawsuit. When you make a claim, the insurer has a choice between keeping his money or giving it to you and reducing his profits. If there is doubt about your claim for accident benefits, they will not pay. The arbitration provisions, in my view, are impractical. How long will mediation take, how long will arbitration take and will there not be a backlog?

It would make more sense, in my view, to take the \$160 million that we are giving up through OHIP, premium taxes and WCB money and use it to subsidize drivers who the insurers say need it because they are on fixed incomes, perhaps to our provincial income tax when the returns are filed, and then we could keep our valuable rights under the present system.

For the reasons that were given by Mr Runciman, by PRIDE and by the Canadian Bar Association, I oppose this bill in its present format. However, I think it is realistic, given the mandate of the committee, to address some of the concerns about the actual wording.

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I have these concerns: First of all, with respect to the preliminary issue, and the most important issue I submit, road safety. I support raising the drinking age and the driving age if it means saving lives and injuries. Judge Osborne's report showed that about 15 per cent of 16-year-olds are involved in car accidents. Raising the driving age to 17 would result in a total saving of about \$525 million if age was the only criterion. That would almost be enough on its own to preserve the present system.

Graduated licensing is an important idea, in my submission.

Mandatory driver training prior to first licensing is something I have spoken to many people about, and I am sure the taxi drivers and police officers who have to use the roads on a regular

basis would be very grateful to have a more qualified driving public. If you watch TV, you will notice that Texaco promotes safe driving. I think that is a wonderful commercial. It is something that the government should make mandatory.

Raise the points on speeding. Lower the starting point for demerit points to over 10 kilometres per hour, not over 15. People consider the first 14 kilometres free. I have acted for people charged with traffic offences, and I can assure you that it is not the fines they are worried about.

Require cars to have a fitness certificate no older than four years. I do not know if anyone has made that suggestion before. I was involved in a case recently where the car that caused the accident was eight years old, was in the hands of the original owner and had rusted-out rear wheel wells. Carbon monoxide can get through and affect the driver's ability to drive. I do not see why we should not be inspecting cars; they kill people.

Require driver retesting every five years. There are six million drivers, I see from reading about the hearings. If that is uneconomic, perhaps a longer period of time would be appropriate. But these are lethal weapons, and people should be retested, in my view.

With respect to the threshold, there have been a lot of comments on it; I am going to look at it from an arithmetic point of view.

First of all, the threshold, it is important to note, reduces litigation in two ways; it cuts out certain cases and it makes many victims give up on borderline cases. Lawyers will be reluctant to encourage those people to sue.

Each component of the threshold must be proved. Each word will generate litigation. There are 10 litigious words in the proposed threshold—a lawyer's nightmare, a defence lawyer's dream world. I have numbered them here. You have "permanent," "serious" and so on; there are 10 words.

If you compare the Michigan threshold—if you do go for a threshold—you have four words to litigate over in the analogous provision, "serious impairment of body function." By adopting the Michigan standard, you would reduce the number of words that you fight over by 60 per cent, and if the goal is to reduce litigation, surely that makes sense.

The Michigan threshold cuts out about 90 per cent of all claims for pain and suffering, according to studies. The Michigan threshold gives us the advantage of 17 years of costly

Michigan litigation about what the threshold means and gives us the benefit of their statistical and judicial guidance, free.

Economic loss should be recoverable. I notice that even some insurers agree with that.

If we are to have a threshold, I therefore favour the Michigan wording instead of the proposed wording. The Michigan wording, in my view, would also meet the discrimination problem that has been advanced with respect to mental impairment.

With respect to accident benefits, the insurers say there will be optional additional insurance, \$450 a week being inadequate for many people. I would like to know how much it will cost. I think the government and the people of Ontario should see this promised benefit before the legislation is passed, not after. If we are being sold a new insurance product, I think we should see the optional equipment and its cost before we buy, just like any careful shopper.

Index the benefits. In my view, that should be a very straightforward point. Consideration should be given to increasing the level of accident benefits. It seems to me that because economic loss is very much a concern of people who are injured in car accidents, the accident benefits, if they are generous, will serve also to reduce litigation with respect to the threshold.

The Vice-Chair: I would like to remind you you have about three minutes remaining.

Mr Shour: I have reached my last remark.

In my view, the government and people of Ontario have the choice of paying, on average, as I understand it, \$50 more or \$200 more for car insurance than we do now. I base that on the estimated \$700 average insurance policy. For \$50 more, we get updated accident benefits and innocent victims lose the right to full compensation in most cases.

For another \$150 more we can maintain full compensation for innocent victims of car accidents. Saving \$150 a year, on average, means about 95 per cent of innocent accident victims get nothing for pain and suffering; they will not recover some or all of their income losses. Bill 68 asks us to be less compassionate for the sake of about \$150. If we are to have Bill 68, in my view, its present wording requires changes.

The Vice-Chair: Thank you very much for your presentation.

Mr Sterling: I would like to thank you for taking the time to put your brief together. You obviously have practical experience, more practical experience than most people, because of your rub with so many people who are involved

in this. Your brief is very practical. I think it makes a lot of sense to a lot of people and, quite frankly, your arguments, many of which have been put to the committee before, but not in as logical a fashion, tell a story.

I have said to this committee before that in my own riding, which is in eastern Ontario, the principal problem is not the cost; it is the fairness of the system. Sure, people in my area would like cheaper auto insurance—everybody likes cheaper whatever it is—but the principal problem is being cut off from an insurance company or having their rate dramatically increased—not by \$150, I am talking like \$1,000 or whatever it is—without

it being properly explained or an insurance company having to justify that.

I agree with you. I do not think it is worth \$150 more for each of us or for each car, whichever those figures relate to, to give up these significant rights that we have. It just is not right.

The Vice-Chair: Thank you for coming before us today.

I would like to take a moment to remind the committee that we will meet again on Monday 22 January in Sudbury. Until then, this committee stands adjourned.

The committee adjourned at 1659.

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From New York State Department of Insurance:

Hsia, Richard, Deputy Superintendent of Insurance

From People Against the Insurance Nightmare:

White, Dr Norman, Chairman; Professor, Faculty of Health Sciences, McMaster University

From Baylis and Associates:

Baylis, Shaun L., President

Drynan, Dr Tracey, Chiropractor

Individual Presentation:

Trebilcock, Michael, Director, Law and Economics Program, University of Toronto Law School

From Fair Action in Insurance Reform:

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From the Ontario Teachers Insurance Plan:

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From the Ontario Society of Occupational Therapists:

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From the Ontario Secondary School Teachers' Federation:

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